

PROBATION OFFICERS' ATTITUDES TOWARDS BALANCING PUBLIC  
PROTECTION AND HUMAN RIGHTS IN THE RISK MANAGEMENT FRAMEWORK  
OF MAPPA

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## **Abstract**

This study is a response to the need for reconsideration of the place of human rights in offender management following the Human Rights Act 1998. Probation has remained hesitant in engaging with the rights of offenders and victims when other expectations in relation to punishment, public protection and risk become the service's priority. The same concepts have created dilemmas for probation practitioners who find themselves in the arena of rehabilitation where offenders, victims and the public coexist. The thesis' emphasis is placed on unravelling these professional attitudes towards balancing the forces between the interests of the individual offender and the interests of victims and the public.

The research initially examines the literature in the area and reviews the factors that appear directly linked to human rights, such as the current probation context, risk assessment, relationships, public protection, and the interplay between crime control and due process. The methods employed include documentary analysis of case law on offenders' human rights claims to ascertain the legal expectations of practitioners, and content analysis of semi-structured interviews conducted with active MAPPA probation officers based in West Midlands to identify their human rights understandings and awareness, balancing approaches towards individual and public interests and what affects their perceptions.

The study found a variability of human rights understandings that operate on the street-level and in most instances do not appear in line with the HRA or the accurate meaning of proportionality. There does not appear to be any human rights training in

the experience of the participants or specific attention to human rights considerations in risk assessments. Their attitudes towards balancing rights, risk and public protection are rather constructed and cannot be considered as their own because they remain affected and determined by cumulative failures of the service, external socio-political factors, and misplaced public expectations.

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## LIST OF ABBREVIATIONS

AP	Approved Premises
CJS	Criminal Justice System
CJP	Criminal Justice Process
CPS	Crown Prosecution Service
CRC	Community Rehabilitation Companies
DPA	Data Protection Act 1998
DV	Domestic Violence
ECHR	European Convention on Human Rights 1950
ECtHR	European Court of Human Rights
HMIP	Her Majesty's Inspectorate of Probation
JCHR	Joint Committee of Human Rights
HRA	Human Rights Act 1998
MAPPa	Multi-Agency Public Protection Arrangements
Napo	National Association of Probation Officers
NOMS	National Offender Management System
NPS	National Probation Service
OASys	Offender Assessment System
OM	Offender Manager
PO	Probation Officer
RAT	Rehabilitation Activity Requirement
RJ	Restorative Justice
RMP	Risk Management Plan

RM2K	Risk Matrix 2000
SFO	Serious Further Offence
SLB	Street-Level Bureaucracy
SLBs	Street-Level Bureaucrats
SPO	Senior Probation Officer
VLO	Victim Liaison Officer
VLU	Victim Liaison Unit
YOT	Youth Offending Team
YJ	Youth Justice

## 1) INTRODUCTION

### a) Context

The present study develops a critical lens through which the area of human rights in probation is examined. The attention is on probation officers who the thesis considers to be at the forefront of balancing the interests of offenders, victims and the public. This necessitates a discussion both criminological and sociolegal in nature which can delve into the decision-making process of practitioners and the criminal justice expectations the service places on them whilst operating at the backdrop of the duties prescribed by human rights legislation. The perceptions of public protection and human rights as expressed by the practitioners is the thesis' overarching focus: the formation of these attitudes, the inter- and extra-organisational factors that influence their understandings as well as the priority they assign to each, and how a balance between the above interests is achieved constitute pivotal foundational aspects of this interdisciplinary study.

The foundation of this study has been determined by the human rights duties of practitioners with main point of reference the Human Rights Act 1998 which incorporates the European Convention on Human Rights 1950 to UK law. The Act clearly establishes in its Section 6 that "*It is unlawful for a public authority to act in a way which is incompatible with a Convention right.*" And further explains in s.6(3) that "*In this section "public authority" includes [...] any person certain of whose functions are functions of a public nature*". This is as far as the Act goes in defining what is a public authority but the Probation Service has been considered both in literature and

case law examined in this study as an authority whose functions are indeed of a public nature and one whose officers must act compatibly with the Convention. It is thereby not a contentious question in legal terms whether probation should respect and comply with human rights.

In understanding professional attitudes, the above observation becomes an indisputable part of the present context not only because it forms the legal origin of the human rights duties of probation officers. It further establishes a central point of reference which raises questions as to the extent that it has been observed or implemented by the Probation Service and, more importantly, the way and approach in which this implementation may have happened. Following s.7(1) of the Act, human rights cases can be heard in UK courts which means that probationers have the option to claim that the Probation Service have acted in a way that has breached their rights under the Convention. These cases are relevant for the thesis' purposes as they present the interpretation of the judiciary and thereby the legal expectations placed on practitioners in terms of human rights. This is not a comparative exercise of attitudes, but what becomes relevant is whether there is professional familiarity with the applicable case law and how these judgments can support practitioners in consistently implementing human rights.

A notable instance that has brought to the surface the underlying concerns between human rights and probation is that of Anthony Rice who murdered Naomi Bryant while on License and under the supervision of MAPPA in 2005. Her Majesty's Inspectorate of Probation conducted a Serious Further Offence case review which concluded that those responsible for managing Anthony Rice prioritised his human

rights at the expense of public protection (HMIP, 2006, p.2). However, a subsequent report from the Joint Committee of Human Rights challenged HMIP's findings based on lack of evidence, arguing that human rights were used as a scapegoat for institutional 'cumulative failures' (JCHR, 2006, p.16). The Rice case demonstrated that balancing public protection and human rights in offender management is a contentious topic which can have wider political, social, criminological, legal and practical implications all of which the study considers determinant in the formation of the practitioners' attitudes. The thesis therefore constitutes a response to the tensions among human rights, risk and public protection, and aims in examining, among others, the limited seminal pieces in the area from Scott (2002), Whitty (2007) and Gelsthorpe (2007) to not only establish the applicable legal framework, but actually identify the attitudes of those at the forefront of this balancing ideal and, more crucially, what underlying factors affect their formation: "*We need more of a window on ordinary instances of everyday decision-making within a probation office to know what really goes on.*" (Gelsthorpe, 2007, p. 509).

#### b) Argument and Research Questions

This project advocates that understanding human rights is to recognise that the interactions among the rights of offenders and victims, and public protection, is embedded within probation's core principles (JCHR, 2006). This project contends that practitioners must familiarise themselves with human rights legislation, and, should keep themselves up to date with relevant case law (Scott, 2002). Implications for adopting this approach will lead to an increase in legitimate practice (Scott, 2002), which could ensure that any future cases brought against the Probation

Service are unlikely to succeed (Gelsthorpe, 2007). Although the contentions hereby made may bear relevance across the practice and theoretical underpinnings of probation, the thesis will focus on the National Probation Service and, more specifically, on the Multi-Agency Public Protection Arrangements risk framework. MAPPA establishes a process where various criminal justice and other agencies work collaboratively in managing serious violent and sexual offenders. This group of offenders are most vulnerable to strict restrictions that could potentially interfere with their human rights due to the level of risk they pose to the public.

The focus on attitudes has also determined the decision of more closely examining MAPPA. The input and approaches of other agencies who work alongside probation in managing offenders is yet another factor to be taken into account when attempting to understand why and how the probation officers develop these attitudes.

Furthermore, this project recognises a need for the MAPPA procedure to take a more collective approach in safeguarding human rights; MAPPA agencies should make the application of human rights their shared professional responsibility and avoid the perusal of individual agendas. The aim of the Probation Service should therefore be to achieve a 'rights balance', whereby the rights of victims and offenders are equal, and do not supersede each other (Gelsthorpe, 2007). Ultimately, there remains a need for a combined public protection and human rights political and theoretical discourse, which recognises that the two can co-exist (Whitty, 2007).

The thesis addresses the following main research questions:



- (a) To what extent do Probation Officers take regard of human rights, when managing offenders in the community?
- (b) To what extent do Probation Officers prioritise or disregard the human rights of offenders?
- (c) To what extent does the NPS ensure operational compliance towards human rights?
- (d) Are Probation Officers aware of human rights legislation and case law and how it might be significant to their management of offenders?
- (e) To what extent have Probation practitioners received adequate human rights training?
- (f) What attitudes do Probation Officers have towards a human rights-based practice as opposed to a risk-averse practice, and what are the factors affecting the formation of these attitudes?

The thesis aims to provide a lens that may project the extent that human rights have been embedded in the practice of MAPPA probation officers, and how the human rights notions of proportionality, necessity and legality are approached and applied by practitioners operating in a risk-based framework. Identifying these attitudes, what supports or limits the implementation of human rights in this context as well as the prospects of a rights-oriented probation, has a crucial purpose: to highlight a human rights culture for probation officers (Gelsthorpe, 2007) which goes beyond legal obligations, and can accommodate the interests of offenders, victims and the public alike.

### c) Structure

The literature review chapter follows a thematic approach where the four main themes of Risk, Public Protection and Offender Rights, Victim Rights, and Crime Control and Due Process. In the first part of the review the attention is initially on the risk assessment and management process, the new probation landscape and the specialisation of risk it has established, and more specifically the challenges these present to the practitioners who use the relevant tools. The second part of the review is more explicitly concerned with issues and questions of public protection, alienations and MAPPA. The third part introduces the victim perspective and the discussion around victim rights in probation. The fourth and final part of the literature review presents a closer view of the Crime Control and Due Process models that underpin the wider contextualisation of public protection and human rights.

The thesis then proceeds to the Methodology chapter where the choice of semi-structured interviews and documentary analysis of case law is explained. This chapter then turns to the presentation of the method of analysis of the interview data and discussion on the choice of a qualitative content analysis. It further assesses the suitability of documentary analysis as a method of analysis for case law and the use of court judgments as documents and concludes with a timeline of the research process.

The data analysis chapter starts with the documentary analysis of a selection of cases where individuals under the supervision of the Probation Service have made judicial review claims against the service based on alleged human rights violations. The analysis looks into the facts and decision of the cases and then places more

emphasis on the reasoning of the court in the interests of understanding the legal expectations placed on probation officers. The chapter then proceeds to the analysis of the interview data which has been regrouped into three main themes, namely Human Rights and Risk, Relationships, and Victims.

The thesis concludes by providing a summary of findings and a set of recommendations that follow the research questions initially set, the observations made in the literature and the observations made in the data analysis.

#### d) Terminology

A note is hereby made in regard to how the thesis addresses the individuals under probation. The reference to them as 'offender' or 'ex-offender' bears both constructive and disabling connotations. On the one hand, it may assist the individual with accepting that part of their past and in moving forward take ownership and responsibility of their offending. On the other, it may prove even more fruitless in the context of probation if all the practitioners think of and associate with the individual is the 'offender status'. The thesis has chosen not to endorse these terms because in advocating a rights culture and humanist reorientation in probation, it invites the probation officers to abandon not so much the term itself, but rather the fixation on (re-)offending which distorts the values of the service. This is, nevertheless, in no way aiming to demonise the term, but instead adopt more constructive and fitting to the purposes of this thesis meanings in the interests of exploring professional attitudes.

Along similar lines of argument, the reference to the individual under probation as 'client' or 'service user' presents certain realistic but also unfavourable aspects. In the first instance, it appears etymologically correct since Probation is a service of the Criminal Justice System that works with individuals to support their reintegration and manage their risk of reoffending. This group of terms which are increasingly used both in the literature and practice are diametrically opposite to the precepts and convictions of this thesis. It is contended that they promote a managerialist understanding of justice that minimises and trivialises the purposes of Probation which in fact go far beyond the provision of a service or product, and in essence toward fostering relationships, rebuilding lives, restoration and realisation of the ability of people to change. Viewing the individual as a client may also cultivate impersonal attitudes towards them, develop a culture of alienation and commodification, and commercialise the nature of an otherwise human-centred agency.

Due to the observations above, the term 'individual' represents the most balancing and promising choice not only in terms of providing a middle ground, but, more essentially, because it reminds that the focus of probation is on human beings, that Probation is a people's service, that decisions taken in risk management affect people's lives, and, if anything, of the inherent dignity of individuals.

## **2) LITERATURE REVIEW**

### **Chapter Introduction**

The following thematic literature review explores the four themes of the thesis which include Risk, Public Protection, Victims, and Crime Control and Due Process. The first theme examines the actuarial nature of the risk assessment process and its implications for human rights, introduces the centrality of the relationship between individuals and their probation officers, and considers the new risk reality the part-privatisation of the service has established. The second theme focuses on the meaning of public protection in probation, the impact and levels of alienation involved, as well as elements and cases that have determined the influence of public protection on human rights, such as the structure of MAPPA, the Rice case and particularly the MAPPA Guidance 2012. The third theme traces the developments in victim policies which are of direct concern to Probation, the binary nature and alleged conflict of interest these have created for the service, and, more importantly, the extent these have introduced victim rights as a consideration for probation officers and as a mechanism of rights balance. The final theme serves as both a representation of how the aforementioned aspects and underpinnings of risk, public protection and human rights can be viewed on the spectrum between Crime Control and Due Process, and also acknowledges the influences of penal populism in balancing individual and public interests. The literature review remains a pivotal stage of the thesis not only because it directly presents the contextual background and the intra- and extra-organisational factors and shortcomings linked to understanding the attitudes towards balancing public protection and human rights.

## **Initial Framing**

The following section aims to provide an initial framing as to the current context of probation and why human rights matter in probation today. The discussion also engages with why the study has chosen to focus on MAPPA as the most suitable template for examining the relevant attitudes and answering the thesis' research questions.

### *Brexit, TR reversal and SFO's*

The thesis argues that it is imperative for the purposes of this study and probation to state that in the post-Brexit era human rights legislation, policies and duties of public authorities remain unchanged. This is because there is no connection between the EU and the ECHR: the word 'European' in the name of the Convention is a geographical term and relates to the Council of Europe of which the UK is and remains a founding member. The membership to the EU is separate and independent of the membership to or any duties that emanate from the membership to the Council of Europe. It is thus highlighted that the departure of the UK from the EU does not in any way affect its membership to the Council of Europe or its obligations under the Convention. This further means that not only the human rights duties of probation officers remain unchanged, but also that there is rather an even greater need in the post-Brexit era to ensure human rights compliance and reinstate that these duties remain unchanged for criminal justice or any public authorities.

Furthermore, the part-privatisation of the service following the *Transforming Rehabilitation* policy agenda in 2013 has established a new reality of risk

specialisation. This has among other interventions resulted in the split of the service into the public sector NPS managing high risk offenders and the private sector CRC's managing low risk offenders as well as various criticisms and challenges to the service in relation to resources, rates of reoffending and identity. This becomes important in three respects as far as this study is concerned. Firstly, the CRC's too remain bound by the HRA duties: the fact that they operate in the private sector does not mean they are not public authorities because their functions remain of a public nature. Secondly, it becomes pertinent to consider the ways that privatisation may have had an impact on the NPS and MAPPA practitioners' attitudes towards balancing human rights and public protection given the pre-existing and new challenges. Finally, the government in contemplation of the apparent failures of TR has announced plans to re-nationalise the service. This becomes relevant to consider in the thesis' context because TR reversal essentially means another restructuring of the service which makes it increasingly important to reinstate the relevance and importance of human rights in probation and ensure that operational compliance, understanding, training and awareness of human rights become a priority in the new infrastructure.

The study also recognises and later examines certain SFO instances that have either directly shed light to the shortcomings in the area of human rights in probation or highlighted factors that the thesis argues appear linked to considerations of rights and professional attitudes. These includes the cases of Rice and McCann which discuss matters of scapegoating, cumulative systemic failures, miscommunications and over-reliance on risk assessments. Particular focus is placed in the Rice case due to its direct reference to human rights and

the service's failures, but also due to the subsequent inquest initiated by the mother of Rice's victim on the basis of Article 2 Right to Life. The inquest appears notable in the present context both in terms of the systemic failures it has underlined and their link to potential human rights violations as well as the centrality of victim considerations and rights balance in offender management.

### *Why MAPPA?*

MAPPA, especially at Levels 2 and 3, manage the most serious violent and sexual offenders who require the collective input and supervision of multiple agencies from Probation, Prison and Police to Social and other services, and the use of relevant panels (MAPPP) to discuss and resource the supervision of the individual. This definitional approach provides the first indications as to the suitability of the framework to the thesis' research topic and questions: it is argued the fact that MAPPA focuses on the most serious offenders means it works with the individuals who are most vulnerable to potentially have their human rights interfered with as a result of the actions of probation. This is because given the high level of risk of harm or reoffending they pose to the public, their criminal careers, complex set of circumstances and risk factors, it is not only likely that strict restrictions are imposed when these individuals are released in the community. They may also potentially be supervised under management plans or license conditions that are more restrictive than they need to be based on the individual's circumstances. As explained in upcoming sections, this very disproportionality or arbitrariness is a key consideration in the context of human rights and creates possible grounds upon which unlawful interferences arise. In other words, MAPPA offenders bear the most potential of



having their human rights violated because more restrictive conditions are potentially imposed on them due to their high level of risk.

Furthermore, it is contented that due to the involvement of various agencies there is a collection of different values, priorities, agendas, assessments and channels of communication that may need to be balanced and co-exist for the effective operation of the framework. The thesis appreciates that this very nature of MAPPA bears the potential of conflicts of interest and priorities, prioritisation of certain agendas or requests at the expense of others, questions of accountability and transparency and who ultimately remains answerable for the management of the individual who for all purposes remains under *probation* supervision. This overview of MAPPA implies that human rights become even more of a consideration worthy of reaffirmation and attention because the structure of the framework requires a collective and shared approach to offender and victim rights. The multi-agency character of the framework cannot be neglected because the interactions among the agencies and the additional requirements for effective cooperation create further breeding grounds of potential disproportionalities.

### *European Probation Rules*

The EPR aim to establish basic principles for probation agencies on an international level based on the universal values, ethics and moral principles of probation. As such, it relates to the present context where it places emphasis on human rights, social rehabilitation and reintegration of the individual, and operate on the understanding that probation is not merely about efficiency, expediency and reduction of reoffending, but

*“also recognises the duties of society to encourage and support them in their endeavours to change and to give them fair access to those resources of civil society on which they, like everybody else, depend to live a law-abiding life.”*

(Canton, 2019, p. 4)

The thesis does agree with Canton (2019) in that the content of the Rules deserve more attention in England and Wales, especially given the post-Brexit post-privatisation environment of uncertainty, because their emphasis on ethical practice provides the best prospects for respect of human rights. It is noted that as in the case of ECHR above, Brexit in no way affects the relevance of the Rules to the UK because the EPR too comes from the Council of Europe.

Quite crucially, the EPR develops an attitude that prioritises vital principles of adequate resourcing (Rule 10), partnerships (Rule 12), research and qualitative approaches (Rule 16), and public awareness of the role and values of probation (Rule 17). These may influence legislation, inform practice standards, provide inspection criteria and have been used by the European Court of Human Rights in support of their decisions (Canton, 2019). It follows that the focus on MAPPA becomes even more pertinent in examining human rights and balancing attitudes because it does represent a framework based on multi-agency and partnership working, require adequate resources of various types to respond to the multiplicity of needs the relevant offenders exhibit, and appear in most need of ethical foundations that go beyond risk and enforcement and towards a rights culture (Gelsthorpe, 2007).

## **A. Risk: Going Beyond the Assessment**

### **a) OASys: Worthy of the name?**

In assessing risk processes and tools in the context of rights, there is a foundational prerequisite to ascertain the meaning of risk in offender management beyond an indicator of likelihood of reoffending. The thesis adopts to that end Whitty's (2007) approach to social construction of risk to argue that the actuarial nature of current risk assessments lacks the inclusivity required to accommodate human rights considerations. These processes have become almost technical in their structure, and they do not appear to invite individualist, bespoke interventions based on evidently needs-oriented assessments (Hannah-Moffat, 2005). The outlook of risk in probation becomes increasingly mechanical when proliferation of associated tools, variability in knowledge and communication of the risk among practitioners, subjective professional judgments and lack of expertise become the defining characteristics of these methods (Whitty, 2007, p.267). This in turn does not allow for a homogeneous conceptualisation of risk to develop and instead places an emphasis on efficiency and managerialism at the expense of inclusivity and reliability. The same uncertainties appear to create an unfettered preoccupation with the risk of reoffending and the processes of assessment, evaluation and constant review (Kemshall, 2003). Probation officers may thereby employ these actuarial attitudes in an attempt to reach defensible risk management plans and be able to avoid blame in instances of serious further offences (Whitty, 2007). The thesis contends that this fixation on defensibility can distance the practitioner

from the individual and distort the reality of risk of which OASys may constitute a prime demonstration.

OASys is a standardised tool used by the prison and probation for the assessment of the risk of reoffending and the needs of individuals. It was introduced in 2001 by the relevant PSO 2205 with the purpose to inform the practitioner of the potential risk posed to the public by certain groups of individuals according to their background and risk factors. The design aims to assess the likelihood of reoffending and aid in the process of formulating corresponding supervision and management plans. The situation of the individual is normally ascertained by a range of factors which the system describes as 'criminogenic needs'. These include but are not limited to criminal record/career, level of education, prospects of employment, financial situation, relationships with friends and family and their associates, history of drug and alcohol misuse (Farrington and Painter, 2004). Fitzgibbon (2005) commenting on this outline of factors notes how it gradually leads to the 'deskilling' of the practitioners. She explains that the 'tick box' type of assessment OASys presents makes the practitioner interchangeable with a standardised system of factors which in turn minimises the importance of casework skills in the process. The observation becomes indeed accurate where an increasing number of practitioners appear distant from what could be described as the 'total life situation of the offender'. Although there are certain background factors common to the majority of individuals under supervision, such as previous offences or low prospects of employment, each offender constitutes an individual case with different criminogenic and personal needs. It follows adopting the attitude of grouping the individuals based on broad common

factors may as well lead to estimations of risk suitable only to some members of the 'group'<sup>1</sup>.

Although the resulting arrangements would benefit some of the individuals with analogous to their situation plans, a considerable percentage remains in a cluster of misplaced 'statistical probability'. Fitzgibbon's (2006) relevant pilot study above exactly examines whether OASys presupposes those very casework skills and, even more importantly, whether the practitioners' deskilling and persistent resource constraint lead to inflation of the level of risk involved. The same enquiry into that transition from casework to risk management has revealed how OASys requires the transfer of information into the system since much of the casework predates its introduction. Further, it was apparent from relevant case studies of her project that there was insufficient follow-up, multiple practitioners involved in a single case, dense record files and a general lack of consistent review of the biographical facts. Other studies also notice inconsistencies in the completion of OASys, "*such as the relationships section, are poorly completed, thus limiting the accuracy of the likelihood of reconviction score (risk score)*" (Caulfield, 2010, p.320 citing Morton, 2009). A stark observation is also how missed appointments and breaches on the part of the supervised individual were found to 'coincide' with those very changes in probation practice (Fitzgibbon, 2006). These shortcomings the study underlines not only reveal how the structure and attitude of the assessment tend to translate the characteristics of the group into the characteristics of the individual. It also implies how relying entirely on actuarial indicators of risk while

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<sup>1</sup> The concept of 'false negatives – false positives' is discussed in more detail later in the review.

avoiding an end-to-end involvement with the individual can only lead to mishandling of data and over-estimations of risk (Worral and Hoy, 2005). The reflective report of an ex-probation officer who returned to the practice after an absence of over thirty years is evident of the above challenges. (Monk, 2016). Among other areas, he specifically refers to OASys and notices that

*“this has the feel of a laborious tool for technicians, rather than an aid for professionals. It can run to 40 pages in length and it is easy to forget what has been written at the start when the end is finally reached. ... it is staggeringly cumbersome, demanding a disproportionate amount of professional time be spent in routine desk-bound IT tasks instead of nurturing those relationships that we know make a difference. ... In probation, so much has changed in the last 30 years – and yet maybe not.”* (Monk, 2016, p.11)

His reflection does confirm how risk assessment tools may have to some extent created tensions in the relationship between individual and practitioner, and how these are gradually turning the service into one of managerialist character. As explained later, that relationship is crucial for the aims and purposes of the Probation Service and one that becomes relevant to all the themes hereby explored. Suffice it here to say though that the above criticisms confirm how the assessment tools, such as OASys, seem to have created certain challenges that bear the potential of affecting the attitudes of practitioners towards the individual as well as the character of the service.

## b) Risk and The Relationship Between Individuals and Practitioners<sup>2</sup>

This, however, is not to say that actuarial risk assessment processes substitute professional judgment and engagement with individuals in all instances.

Richardson's (2008) relevant study notices a degree of scepticism towards actuarial methods of risk assessment and a tendency in probation officers to rely on professional judgment. Perrault et al (2012) comment on the same observation as reflected in youth risk assessments and acknowledge how that judgment is more often than not influenced by biographical historical factors rather than statistical tools. This also supports the opinion that Bullock identifies whereby the practitioner is in an ongoing relationship with the individual which preserves the overall humanistic values of the probation service (Bullock, 2011; Deering, 2010; Annison et al, 2008). What remains questionable is whether those values are in all instances abided by and even more so whether the assessment process itself allows for their accommodation. Following relevant enquiries, in many instances the information sought from the assessment is not included in the individual's record (Bonta and Wormith, 2007; Harris et al, 2004). In others where the information was indeed comprehensive, what has been noticed is an insufficient examination of those facts in such a way that they would not be reflected in the supervision plan (Robertson, 1988; Kemshall, 2003). Not only does this damage the values of responsibility and reintegration the probation service is supposed to serve. It also manages the creation of a rehabilitative plan based on non-compliance and inconsistencies between assessment and management (Perrault et al, 2012). It is worth noting though

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<sup>2</sup> The notion of relationships is introduced here but is discussed throughout the thesis due to its centrality to the research questions.

that Perrault's and similar methodologies of contact with practitioners suffer on certain limitations which the researchers did acknowledge. These include primarily generalisations based on an assumption that their individual caseloads represent the wider population or the whole range of offender backgrounds and needs whereas each case is expected to be treated on an individual basis.

This non-compliance and the previously mentioned deskilling of the professionals in turn operate in an overall inhibitory way in regard to the management of risk in the community as well as the relationship between practitioner and individual. On the one hand the inconsistencies between what risk assessment was introduced for and what the end result appears to be compromise both the reliability of the process itself as well as the level of competency of the probation officers. On the other, the deskilling process accompanied by the move towards actuarial and 'tick-box' type of assessments detaches the practitioner from the client. Interestingly, previous interviews with probation officers have presented them

*more concerned with managerial processes, targets and tasks than mentoring offenders or their relationships with them. Again this could indicate distancing of practitioners from their offenders, allowing the possibility of not accurately reading or following up worrying risky behaviour or seeing risk in a contextualized way. (Fitzgibbon, 2012, p.103)*

It appears that the transition from casework to risk assessment which Horsfield (2003) succinctly describes as a move towards 'spurious scientificity' may have very little to contribute towards the knowledge base or indeed the accurate



prediction of risk. On the contrary, it rather appears to undermine the foundations of trust and reliability among the individual, the public and the officers. This becomes even more important an observation in view of the already sensitive and vulnerable relationship between the individual and the probation service. Beirne et al's (2004) research draws attention to the controversial topic of fear of violence of the staff working with individuals. Its findings show how the officers were willing to speak of their anxiety, worry and concern with the issue in question and their readiness to give priority to their safety over altruism. Their observations become relevant to the current purposes exactly because they evidence the thin line upon which the relationship in question exists. It follows that a standardised system with the potential to actually distance the practitioner from the individual even further would appear more 'attractive' to the fearful individual than the engaging one-to-one casework. This disengagement can then only mean a unilateral treatment and understanding of the parameters of risk by the officers and ensuing referrals to inappropriate supervision or rehabilitation programs.

### c) 'Transforming Risk': Privatisation, Identities and Cultures

The thesis acknowledges the attention the part-privatisation in England and Wales of probation has received and its effect on the relationships between practitioners and individuals, practitioners and rights expectations and MAPPA practitioners and the new service infrastructure. Following the government's report *Transforming Rehabilitation* in 2013, there has been a period of restructuring of the probation service and its division to private and public sectors. This has given rise to 21 Community Rehabilitation Companies in

England and Wales managing low to medium risk offenders and the National Probation Service now working only with high risk individuals. What is of interest is to explore in the first instance the implications that privatisation has had for MAPPA; or, more specifically, how the 'transformation' might be informative of the current attitudes of those probation officers that still operate under the public sector. Secondly, observing the early steps of the above transition and the perceptions that the now private sector practitioners hold about the reliability of CRCs' work may bear wider connotations for the legitimacy of the service as a whole. This becomes even more relevant to our purposes due to the close proximity of legitimacy and accountability to the subject matter: it is contended the human rights duties and expectations on public authorities act as a form of accountability for probation officers and their offender management plans. It is in short, the purpose of this section of the review to witness the transition from public to private as a means to establish another level of understanding of or influence on the attitudes of probation officers. It is also reminded that although the observations and focus of the thesis relate to NPS and MAPPA, the discussion may be of relevance to CRCs as well: indeed, for the purposes of the Convention and section 6 of HRA, the CRCs are still 'public authorities' because, even though operating in the private sector, their functions are of a public nature, and as such, they have the same human rights duties as the NPS or any criminal justice agency for that matter.

i. The experience of being 'betwixt and between'

The observations immediately after the transfer to CRCs provide the most insightful input to the study's purposes. That very process or transition was characterised by a great and general uncertainty: in terms of future ownership

of the service, employers, expectations and priorities (Robinson et al, 2016).

This state of 'not being in the know' as to what comes next also implies that the whole process is involuntary, and in other words a situation that the relevant probation officers have been put into without prior consultation. The immediate consequence of this 'uncertain' transition is what many have identified as a 'loss of identity' (Waring and Bishop, 2011; Deering, 2011; Brubaker, 2005). In the process, probation officers and other practitioners who find themselves in similar movements, begin to question whether privatisation will alter their responsibilities or the purpose of their practice to the extent that the very essence and nature of the service becomes unrecognisable. Their own professional identity is therefore put in jeopardy while they attempt to make sense of what has changed, how is it going to affect them and what expectations the new reality places on them. The experience of and approach to change of circumstances is invaluable here because they may be telling of the attitudes of probation officers as a whole towards the values of public probation and the interests of the individual.

Burke et al (2017, p.194) refer to a noteworthy contextual notion to explain the experience of change and migration of probation officers from the public to the private sector, namely diaspora. In its original sense and definition, the term means

*"the dispersal or movement of a population from its original homeland. A defining feature of diaspora communities is that they are often characterized by a strong collective memory and commitment to their common heritage"* (cites Brubaker, 2005)

The above parallel and approach raise a question as to whether the public sector or MAPPA probation officers are indeed characterised by that strong collective memory and commitment to heritage and traditional probation values. The argument goes if they were characterised by those attributes the transition or movement would rather be received with contempt and scepticism. That commitment would also mean the long-established association of the service with social work, its belief in the ability of individuals to change for the better whilst remaining committed to the protection of the public (Robinson et al, 2016; BASW, 2012; Vanstone, 2004). Indeed, past interviews with probation officers following privatisation have revealed that

*“despite sustained and considerable turbulence in and around the probation service, there was evidence of an enduring ‘probation habitus’ among frontline workers, which they strove to maintain. This habitus, they argued, centred on interviewees’ perceptions of themselves and their colleagues as ‘the right kind of people’ for the job: i.e. people ‘with the right values, virtues, qualities and experiences’ rather than a particular set of technical skills”* (Robinson et al, 2014, p.133)

This and similar observations lead to an inference as to how the attitudes and approaches of probation officers are not in all instances their own, but rather a social construct; a product of the media, popular and political demands and thus extra-organisational pressures. However, the assertive self-description as ‘the right kind of people’ may understandably be received with some criticism in terms of its reliability and applicability to individual probation officers. What

remains true is that the priorities and purposes of probation have indeed changed as a result of, but not only, privatisation; there were other ongoing 'transformations' that questioned whether practitioners indeed remain 'the right kind of people for the job':

*"from local to national; from a missionary to a crime-control focus; from a relatively solitary and secretive agency to one now firmly embedded in a series of community and multi-agency partnerships, wedded to the prison service as part of the National Offender Management Service (NOMS) and, of course, from a social work-trained service to one which aims to be a law-enforcing and public protection agency."* (Nash, 2011, p.473)

This is in no way to say that existing probation officers are no longer suitable for either the public or private sector. What past interviews have actually revealed is an acknowledgment from the practitioners themselves that privatisation creates a probation environment based on a work ethic and values inherently different to the ones they had initially agreed to: *"I don't want to work for a profit organisation. This is not what I want to do, payment by results that sounds corrupt."* (Burke et al, 2017, p.195). Statements of this nature do bring to the surface the debate of profit as an incentive and the government's intention to introduce an element of competition in the area of probation through the means of part-privatisation. Although the particulars and prospects of profit maximisation is outside the remit of the current study, the ideas above cannot but question the extent that things were indeed following the long-established probation values or, more importantly, whether the 'new' public sector remains faithful to those values in the post-part-privatisation era. It remains questionable

whether the traditional probation values, the belief in rehabilitation, respect for human rights, accountability and the allegedly inherent social work element remain part and parcel of the public sector probation.

The maintenance of values is not the only area which presents both sectors with challenging considerations. The 'deskilling' of practitioners remains a problematic in the case of private sector probation as well. The modern probation of ticking boxes, filling out 'one-fits-all' type of offender assessment forms and limited contact with individuals has lead to de-professionalisation of the service. More importantly, the practitioners move further away from the social work aspect of the role which has a direct impact on their relationships with individuals. A similar form of deskilling is seen in the case of CRC probation officers but in their case originating in a different source, i.e. the lack of contact with high risk offenders:

*"With higher risk offenders now located in the NPS they were most suspicious of the government's motives for the changes and feared becoming deskilled by the loss of working with high risk offenders and in the courts."* (Burke et al, 2017, p.196)

This new normal brings back the question of identity and what those practitioners used to appreciate as part of their everyday work. Although some might find the potential of not working with a group of individuals that poses more challenges to the case manager as a welcomed development, this still remains a part of the professional identity crisis that has followed privatisation. Added to this, the above allocation of cases to the two sectors may be wrongly

perceived by CRC practitioners as one which aims at leaving to the private sector only the less serious or important cases. Recent studies have even expressed how that new infrastructure may ultimately make CRCs 'socially invisible' or seen as a form of 'second class' probation (Deering and Feilzer, 2017; Robinson et al, 2016). Such misconceptions may lead to further de-professionalisation and loss of incentive and enthusiasm on the part of probation officers. Although this in itself raises questions in terms of the prospects of privatisation per se, for present purposes it is yet another confirmation that, whether public or private, the probation officers remain challenged by the same old tensions the service is yet to address.

The apparent identity crisis as the product of privatisation has left the practitioners in a state which can be described as liminal, i.e. an 'inter-structural' phase that puts the person between conflicting, socially constructed identities (Turner, 1967). Robinson et al (2017, p.166) refer to Beech's (2011) observations in regard to the liminality of practitioners to explain how the whole of CRC staff are in essence 'liminars' because of the very uncertainty in almost every aspect of the new working environment. What they have described this situation as is along the lines of 'a half-way house', 'an unwanted divorce' and 'social invisibility' which altogether summarise the involuntary and ambiguous nature of a 'new' self-acclaimed infrastructure. This approach has also been reflected in the attitudes expressed in relevant interviews with probation officers (Burke et al, 2016):

*I think the greatest sense of loss is identity, I think there is an identity crisis between the two, in terms of the CRC versus the NPS. The whole idea of a probation organisation I think has been lost.*

ii. Legitimacy and Relationships

Statements of the type above are not only telling of the de-professionalisation, deskilling and identity crisis of probation officers, but also the extent that such an agency can preserve legitimacy across the board. The notion of legitimacy relevant to this review is the one that comes directly from the public as a form of trust and confidence in the service. The argument goes it becomes rather questionable whether the service users, either offenders or victims, or the public at large can safely place confidence in the new probation infrastructure. Murphy et al (2015, p.4) have explained the importance of that approach to legitimacy exactly because *“when citizens recognise the legitimacy of an authority, they believe that the authority has the right to prescribe and enforce law-abiding behaviour”*. It thus remains important for any type of probation officer to foster a relationship of trust and confidence between themselves and the different ‘stakeholders’ they work with on a daily basis. Equally important is for the practitioners themselves to be assured of their own legitimacy, i.e. *“confidence in their own authority and a sense that ‘their role and activity . . . is justifiable”* (Branton and Quinton, 2014, p.1026), so that due process implementation and offender compliance can be secured (Deering and Feilzer, 2017). It is a recurring contention of this project that rehabilitation and community reintegration are more likely when the individual makes sense of the conditions and restrictions they are put under, as well as when they see their rights observed or being interfered with only to the extent that is necessary and



proportionate. This again highlights the centrality of knowing the offender and the victim and what their needs are:

*“Establishing legitimacy in practitioner-client relationships is based on ‘a dialogue . . . by and through which legitimacy is established and reproduced’. This dialogue is at the core of the contention that the relationship between practitioner and supervisee is the ‘key site or resource within which to develop legitimacy’.”* (Bradford and Quinton, 2014, p.1027; McNeill and Robinson, 2013, p.122)

This further means that the relationship between practitioners and service users can itself act as a form of accountability, both in the public and private sectors. It is through that fostering of relationships that practitioners can regain their skills, make sense of their identity, understand needs, rights and circumstances and ultimately reclaim their social role.

It is finally imperative to appreciate yet another level of interpersonal relationships that privatisation has created, namely the one among practitioners or more specifically between CRC and MAPPA practitioners. As the relevant later section examines, a considerable part of the shortcomings of MAPPA is the lack of proper communication among the different agencies involved in managing individuals. The CRC probation officer is now in essence yet another form of agency that MAPPA needs to make sure they maintain a working relationship with. It is rather regrettable that although private and public sector probation officers in most instances share the same buildings and find

themselves within the same physical space, there remains an apparent communication gap:

*There is only a spiral staircase linking NPS and CRC, but I'm very conscious of how little I use that staircase and how, when I go downstairs to use the kitchen on the floor below, I feel like I'm in someone else's territory.* (OS interviewee in Burke et al, 2016)

It is such approaches that provide evidence of the continuing omission of the system to address the root causes of the probation problematic and its fixation on certain priorities at the expense of other areas of need. The similarity between the challenges faced by public and private probation confirms the uncertain capacity of privatisation to respond to and balance the competing offender, victim and public interests.

Owing to the continuing failures of the TR policy and early termination of CRC contracts, the current government strategy has established plans and recommendations for re-nationalisation of the service. These are included in the Strengthening Probation Consultation (MoJ, 2019) and Proposed Future for Probation (HMPPS, 2019) papers which introduce a reformulation of the current regime rather than complete withdrawal of the public sector. Although a detailed analysis of these steps is outside the remits and focus of the study, an overview is provided here in the interests of examining potential links and providing an acknowledgment as to where the subject matter sits in the current developments.

The new proposed regime introduces a number of changes to the delivery and structure of the service whilst maintaining certain TR elements. These focus on centralising the role of the NPS which will now have responsibility for all community orders and licenses but also commission certain services, such as unpaid work, accredited programmes, and rehabilitation interventions from the market (HMPPS, 2019). Added to this, each NPS region will be assigned what the same recommendations describe as an 'Innovation Partner' from either the private or voluntary sectors. Although re-nationalisation has been a welcomed decision to address the TR shortcomings, there have been early criticisms of the above elements. From its outset, the proposed strategy exhibits signs of continuing outsourcing of public money since commissioning and private sector partnering continues which keeps the marketisation of the service intact. Also, the recommendations present the 'renewed' NPS as comparatively inert to the dynamic and innovative private sector (Carr, 2019). The elements of private partnering, continuing reach of external sectors whose clarity of values and purpose remain unclear to the service and commodification of interventions may reproduce the extension of geographical and communication barriers which have in the past created distance and lack of cooperation among practitioners, individuals and the service (Annison, 2019).

From the perspective of the thesis, there may also be additional considerations in relation to human rights which make the present subject matter increasingly relevant in the proposed infrastructure. An initial gap in the aforementioned papers is that there is no reference to human rights at any point in the course of the documents' approach. This serves as evidence of the continuing neglect of responsible authorities to address this area of need and that lessons from

previous SFO's have not been learned or actioned. Furthermore, it becomes imperative to recognise that no matter how sensible the re-nationalisation enterprise appears in the view of the impact of privatisation on the service, it still constitutes another change and transformation of the service. This means that the pre-existing areas of concern, such as staff morale, work ethic, insufficient training, availability of resources and relationships among colleagues and with probationers will re-emerge if not given the required attention in the course of the transition. These same areas remain directly linked to human rights and as such any impact on them will in turn affect the balancing attitudes of practitioners in the course of making sense of the new reality. There is thereby a potential danger in the service experiencing the same attitude seen upon the introduction of TR, i.e. in the attempt to get re-nationalisation right, a disproportionate attention may be given to preserving elements of marketisation at the expense of human rights awareness, knowledge and training. Whereas, the thesis contends, the re-nationalisation opportunity provides a timely opportunity to re-introduce human rights to the service and ensure that a rights culture is placed at the centre of the proposed infrastructure. The same realisation makes the present study and its contributions all the more necessary in the present probation context, and further confirms the need of a rights balance in approaches to re-nationalisation and cultural shift of the service.

### iii. Occupational cultures

The persisting challenges and professional identity crisis in the current probation infrastructure not only justify the thesis' focus on probation officers and the development of a rights culture, but also echo the matter of occupational cultures and its relevance to the present enquiry. The concept can

normally be applied to most organisations and refers to the values of the institution, but also the beliefs, coping mechanisms and characteristics of the people that represent its workforce and come in contact with the wider public (Schein, 1985). The discussion of occupational cultures in probation has not been as prominent as in the case of other criminal justice agencies, such as the police and its 'cop culture' (Reiner, 2010), with Mawby and Worrell's (2011) study now constituting the main instance that has directly addressed and explored the area in question. The occupational cultures of probation do not appear monolithic or static (Mawby and Worrell, 2013). The same study finds that certain long-standing values of probation such as the ability of people to change and effect change, vocationalism, autonomy, mutual support, creativity and working on the threshold of the law enforcement and law breaker worlds constitute defining characteristics of the probation officer. Notably, their argument goes the same may render them 'socially tainted' due to working with people that the public considers as 'undeserving' (Kreiner et al, 2006).

The practical aspects of the profession remain equally relevant in understanding these cultures (Mawby and Worrell, 2013), such as the physical space of the offices, the long desk-bound hours, the language or humour they use as a mechanism to cope with the everyday challenges of the job, and, quite interestingly, the realisation that they do not seem to possess the cultural symbols that other criminal justice practitioners are associated with, e.g. the police uniform or the courts' wigs (Parker, 1963). What is even more pertinent to consider in the remits of the present study is how this approach to probation's occupational cultures identifies that working relationships between probation officers and offenders are crucial to the service's purposes, and how "*imposing*

*on them services designed by remote, out-of-touch powers, [creates] an 'us vs them' culture.*" (Howgego (PQ), 2018, p. 23) Another noteworthy cultural element they highlight is the feminisation of the service that again represents a differentiation from other CJ agencies who may be stereotypically thought as male dominated. This implies the adaptation of male colleagues to a feminised environment but also the reality where female officers mostly work with male offenders (Hamilton (PQ), 2018).

The enquiry into cultures further links to practical and moral issues around probation training which the present study also considers directly relevant to its subject matter. Mawby and Worrell (2013, p. 143) indeed notice that over the years, probation trainees have expressed a change in training from one that *"was all about understanding, using the relationship, hearing what people aren't telling you"* to one where *"you're never taught how to engage with them really in supervision and how to work with them on a one-to-one basis."* It thereby follows that although the detailed examination of occupational cultures in probation is outside the remit of this study, it remains pertinent to acknowledge that many intra- or extra-organisational factors that the thesis considers part and parcel of attitudes towards balancing rights and risk, such as relationships, training, expectations and multi-agency working, are also defining cultural *"ties that bind' probation workers to what was described to us as an 'honourable profession'"* (Mawby and Worrell, 2011, p. 27).

#### d) And Towards Human Rights

The thesis suggests that there is an interdependency between human rights and the practitioner/individual relationship whereby a working relationship between probation officers and individuals can better support the practitioner in understanding the individual's needs and circumstances and engage with considering their rights: this then provides better prospects of compatibility with the duties prescribed in the Human Rights Act 1998. Similarly, the HRA establishes a legal framework which places certain rights expectations on practitioners which when embedded in probation and subsequently met can raise legitimacy and accountability (Scott, 2002), and thus restore or sustain the relationship between individuals and practitioners in the long term.

The Introduction of the thesis has explained this legal framework as well as the relationship between the ECHR and HRA, why public authorities such as probation have a duty to respect human rights, and more specific implementation approaches will be examined in the discussion of MAPPA in the next section as well as in the case law analysis later in the thesis. What deserves to be reiterated at this point is that individuals whose rights have been violated as a result of probation measures have recourse to domestic courts to review their case and provide a remedy where applicable based on section 7 of HRA. This has created a possible approach to human rights implementation that has been described as 'fire-watching':

*"seeing to change policy and practice as little as possible, but making sure that any cases brought by offenders or victims against the probation and other criminal justice agencies are unlikely to succeed."* (Gelsthorpe, 2007, p.496)

The 'as little as possible' implies some negative connotations of doing the absolute minimum for the sake of avoiding costly litigation based on the contention that less successful cases against the probation service may indicate greater human rights compatibility. Also, this reminds of the factors underlying or limiting the implementation to the level of 'as little as possible', such as resources, caseloads, public and systemic expectations as well as preoccupation with risk and the existence of a constructive relationship between individuals and practitioners or the lack thereof. In regard to the latter, there appears to be a prospect of ensuring less successful cases reach the courts by addressing offender rights during the development of the relationship, but there may also be potential to achieve even more than that too.

This approach of 'as little as possible' had actually been noticed at the early stages of the HRA implementation too. Following the introduction of the Act, Circular 59/2000 was issued for practitioners in the form of guide on human rights applicability to probation and how to handle relevant claims. It is argued that the relevant Circular appears to follow a similar technical and tick-boxy structure to the actuarial approaches to risk management. The circular included examples of likely challenges followed by suggested counterarguments based on previous ECtHR rulings, starting points for court arguments and an instruction to seek legal expertise if an individual raise human rights matters (Scott, 2002, p.14). It thereby appears that the Circular did not so much focused on the spirit and purpose of the Convention and the domestication of that by the HRA. It would be interesting to hear whether the participants are thus not only familiar with ECHR/HRA framework, but also the aforementioned and



subsequent Circulars on the matter, and, if so, their experience with the use of these in human rights implementation in offender management.

In regard to the impact of the preoccupation with risk on human rights, it is argued that one manifestation involves how the inflation of the level of risk becomes a threat to the rights of the individual. Over-estimations of risk either as a result of the deskilling of practitioners or non-compliance may translate to stricter interventions and more restrictive supervision plans to manage the alleged high-risk offender. Imposing license conditions meant for very high-risk offenders to high risk ones constitutes a prospective source of unlawful interference with their rights. It may thus be inferred the process of interference with the offender's rights starts when the professional attitudes –either as a result of standardised actuarial methods or detachment and distancing from the individual, become prone to miscalculations of the risk of reoffending involved. This would also have the adverse effect of making the probation service more anticipatory or correctional and thus prone to false positives and false negatives (Kemshall, 2009) which remain a worrying possibility of risk assessments:

*“the research shows that in a third of cases this assessment was not done, and even when it was it was often incomplete, and conclusions were inconsistent. As a result, there will be significant false positives (people identified as dangerous, but who are not) and false negatives (people identified as not being dangerous, but who are).”* (Bennett, 2008, p.7)

As Hannah-Moffat (2005) and Kemshall (2003) advocate, special groups of offenders are more vulnerable to adverse assessments of risk of harm;

*“the over prediction of dangerousness and potential risk will occur to those, like the mentally ill, who are more vulnerable and fulfil many of the criminogenic factors by virtue of their mental illnesses not their criminality, i.e. unemployment, homelessness, lack of support from family.”* (Kemshall, 2003, p.104)

Another danger that the attitude at stake presents is the higher likelihood for an individual to breach a supervision plan that they either believe is over-restrictive and unfair to them or comes from a practitioner who has during the course of the assessment been detached from the individual's life situation. Interestingly, individuals appear to share practitioners' views of good practice, and can benefit from defensible decision-making, as their rights are likely to be given due consideration (Kemshall, 2009). Individuals would be more likely to follow supervision instructions of a practitioner they have been in a regular contact with and who has made the RMP defensible not only to themselves and the service but also in the eyes of the individual too.

This constitutes the introductory stage of a central aspect of the thesis that will be discussed throughout the current review, namely the development of a 'rights culture' within the probation service which Gelsthorpe (2007, p. 496) defines as *“making human rights the anchoring value of criminal justice, permeating policy and practice in a thoroughgoing way”*. This thereby presents a rationale based on, oriented towards and aimed at a rights mode of operation throughout the assessment and management processes which may provide resolution to probation's purpose dilemma between reintegrative risk management and 'risk anxiety' (Kemshall and Wood, 2008). The rights culture

does not appear to be solely concerned with offenders' rights or purport that HRA does not uphold public protection; that would indeed be replacing one imbalance with another. In essence, and if anything, "*the culture of rights is a culture of social inclusion, where no one is outside the constituency of justice.*" (Hudson, 2001, p.112) As such, it exhibits the capacity to both accommodate the rights of offenders and victims and meet the expectations of the wider community regarding accountability and public protection.

It remains questionable though whether any human rights specific training has proven effective in the context the thesis examines, but it may be the case that Scott's (2002) observations prove prophetic in describing the training implications of the HRA for probation practitioners. He states that "[p]ractitioners need to know the 1998 Act and be kept abreast of relevant case law [...] with a strong centre coordinating training and information about Human Rights Act developments" (Scott, 2002, p. 15). This is what he essentially describes as a form of 'investment in staff' and a commitment to the development of a human rights culture in probation which places "*an onus upon the National Probation Service to explain the implications to staff [...] and] utilise legal expertise*" (Scott, 2002, p.23). It thereby becomes crucial to hear from the participants of this study whether they have had any experience with such training and whether it has been effective in supporting their understanding and implementation of the HRA. For example, Scott (2002, p.13) notes that following the introduction of the HRA there were workshops and regional events run by the Home Office and it would thus be interesting to examine whether the participants with more years of experience have taken part in any of those or similar events more recently.

## **B. Public Protection: Fears and the ‘Critical Few’**

### **a) Probation and the Criminology of the ‘Other’**

The thesis develops on the contention that public protection depends on and is telling of how the system and the public view the offender. This is from its outset a significant for the probation practice assertion given the often-conflicting interests that it is supposed to serve, and the people and circumstances with which the officers come in contact. The public tend to view offenders as a separate entity from the rest of the community, an outcast who has managed through their acts to alienate themselves from the law-abiding society and become an ‘outsider’ (Douglas, 1992). This attitude has further created misconceptions, exaggerations and anxieties to the public and the responsible authorities. The adverse result is a tendency to create images that often have no resemblance to who the offender actually is or indeed the reality of crime. That is to say more often than not there is exaggeration and over-reporting of relatively low-incidence crime, focus on specific crimes by the media, such as rape and SFOs, which widen the gap between the individual and the community. Indeed, the majority of online newspapers tend to publish texts along the lines of

*“The results will shock and disturb. They give a frank insight into the lives of violent criminals, many of whom admit that they are continually on the brink of reoffending.”* (Hill, 2007)

This observation is succinctly summarised by what has been coined as the Criminology of the 'Other' which

*"[i]n its deliberate echoing of public concerns and media biases, and its focus on the most worrisome threats, it is, in effect, a politicised discourse of the collective unconscious, though it claims to be altogether realist and 'commonsensical' in contrast to 'academic theories'."* (Garland, 2001, p.135)

The theory confirms that the very alienation of the offender by aggravated political and media discourses has the effect of creating two distinct groups, 'us' and the 'alien other' (Garland, 2001). The act of distancing the offender from the rest of the society only succeeds in treating them as an alien source of danger that needs to be contained. The proliferation of such attitudes has a direct impact on the policy and practice of probation which as a response may prioritise the protection of the public from the alleged danger. Kemshall and Wood's (2008, p.614) examination of involuntary and taboo risks notes how the alienation of the offender allows the practitioners to take anticipatory, preventative and even punitive measures in order to protect the public (Home Office, 1990). They more importantly underline the significance of public, political and media influences in shaping the above trends. Following the Criminal Justice Act 2001, there has been a reorientation of the probation practice that allegedly aims to make public protection the priority of the service. The social and rehabilitative ideals start to receive less attention, the practice and policies of probation become more punitive and correctional in character, while the practitioners adopt a rather defensive and risk-averse work ethic (Kemshall, 2003; Kemshall and Wood, 2001). What this translates to is

essentially a situation where the individual is not only alienated by the society but also by the service which is supposed to support them in their reintegration back in the community. This becomes even more relevant to the probation officers in view of the current risk assessment mechanisms. OASys and similar tools, such as RM2K, have led to the deskilling of those operating them and the avoidance of end-to-end involvement and caseload (Worral and Hoy, 2005).

It is equally difficult to separate the approaches of the probation practitioners to public protection from the wider political background within which the former have been formed. The changes in the probation practice and attitudes indeed become less surprising (Nash, 2000) given the socio-political circumstances. They therefore experience a change embedded in crime control, actuarial methods of assessment and management, and public protection which make the current practice unrecognisable given its historical social and rehabilitative focus (Feeley and Simon, 1992). The turn to penal culture, harsher punishments and crime prevention as reflected in the probation practice's transformation is symptomatic of the wider 'tough on crime' rationale advocated by the New Labour government (Raynor and Vanstone, 2007). Following the murders of Sarah Payne, James Bulger and others, media scrutiny of not only the probation service but of the system as a whole started to accumulate:

*"Both prisons and the Multi-Agency Public Protection Arrangements or MAPPA - a panel designed to protect the public from serious offenders in the community - were side-tracked by considering Rice's human rights above their duties to the public, the report said."* (Marsden and Barrett, 2006, p.3)

This further developed the 'tough on crime' approach of authorities and politicians which resulted in more punitive and restrictive measures seen in their statements, and presented an increasing potential of breaching the human rights of offenders:

*"The announcement follows a Supreme Court ruling that indefinite registration could breach human rights. Ms May said the Government was "appalled" at the ruling and would "make the minimum possible changes to the law". [...] Crime and security minister James Brokenshire said: "Protecting the public is our number one priority and tough checks and a range of tools are already in place to manage known sex offenders". [...] (Morris, 2011, pp.2-7)*

Although it could be argued this represents a response to the high incidence of SFO's, public protection may not actually be the only motive behind the relevant political decisions. Authors have identified how these high-profile cases were used by the then political discourse to justify the proposed reforms, and create the appearance of prioritisation of protection of victims of crime and the wider public (Kemshall, 2007; Nash, 2005; Williams, 2005; Kemshall and Wood, 2008). These seminal cases that in fact brought to the surface systemic faults were rather utilised to justify harsh measures that would appeal to the electorate and those misplaced, alienating public expectations; indeed "[p]olitical parties were parading their tough credentials, anxious to appease the press." (Nash, 2005, p.52)

It is thereby further asserted that the impact the media has had on the development of public protection perceptions within the probation practice has

not been unnoteworthy. It is not the purpose of the current review to explore the plethora of literature on the ways the media permeate the entirety of criminal justice processes and influence policies, decisions and legislation. What is of interest here, nevertheless, is how the media compound the public anxieties about repeat offenders, inflate the relevant levels of risk involved and create defensive attitudes on the part of the practitioners. Kitzynger's (1999) research in the area of media coverage and shaping perceptions of sexual violence has not only suggested how the press creates stereotypes of the 'predator danger' character. It also highlights the power of the media to divert resources from other areas of need, such as supporting victims or rehabilitation of offenders. The argument goes in an attempt to satisfy popular and media demands and thus avoid condemning reports, politicians waste valuable resources in adopting punitive and harsher measures in respect to offenders (Kitzynger, 2004).

In essence, the relationship between risk management and public protection in the probation context serves the interests of the media well because it provides an issue of direct concern to the public. Jewkes (2006) accurately notices how the media employ certain mechanisms to appeal to public protection, such as emphasising the vulnerability of individuals and exaggerating potential risks; the fear of crime thereby becomes fear for personal safety and victimisation (Bazelon, 1978). What this means is that by compounding the fear of victimisation, the media indirectly alter the focus of probation. In such an environment the probation officer may inadvertently become more concerned with responding to the fears of the public, and satisfy the demand to 'correct', rather than rehabilitate, the individual. This further means a more defensive attitude on the part of the practitioner which not only undermines the individual's



interests of reintegration and development of responsibility. It also leaves no room for careful consideration of the impact of the over-emphasis on public protection on the rights of the offender. It seems that the description of the situation as a typical 'chicken and egg' dilemma enjoys credibility: On the one hand it is unrealistic to expect authorities to take any action that would leave them vulnerable to criticisms on the basis of soft measures or risking the safety of the public (Nash, 2012). On the other,

*"practitioners, who may well know the everyday realities of risk much better, may also feel trapped by the 'getting it wrong' mentality and subsequent public vilification that follows any perceived 'failure' on their part."* (Nash, 2012, p.267)

Along similar lines of criticism, Ryan (2014, p.43) concisely describes this complexity among media, politicians and public protection by recognising that

*"what we normally refer to as public(s) opinion about crime, its extent, what we might do about it, is a problematic social construct which has been put together by a complex set of interactions between the media, the agencies of law and order, pressure groups, and not least, those very politicians who simply claim to be responding to it as good democrats".*

It therefore follows that the alienation of the offender as 'the critical other', the political interests, and finally the influence and fear of media criticism present an unfortunate situation: Not only do they operate in an undermining manner in regards to the rights of the individual, but they also foster a culture of penal populism of 'deserving and undeserving'. This form of alienation has been

further described as a situation of 'less eligibility' (Sparks, 1996). Gelsthorpe (2007, p. 498) succinctly explains that this alludes to the populist punitive attitudes which hold that "*offenders' circumstances should always be worse than those of the least advantaged non-offenders [...] shouldn't be 'soft' and offenders shouldn't have 'treats'*". Deterioration of the reintegrative probation ideal (Gelsthorpe, 2007) and meaningful relationships with individuals, and the 'tough on crime' political attitudes seen above, appear to have been influenced by this eligibility. The same attitude of deserving and undeserving may paradoxically extend to offenders' rights which the popular opinion might view as 'undeserving' when in fact the commission of an offence does not automatically justify human rights interferences: the most fundamental aspect of human rights law and discourse is that what entitles people to human rights is solely the state of being human.

#### b) Riots and The Fifty Shades of Alienation

The ethical and moral implications with which the human rights discourse comes has prompted a need for a basis upon which the old-new known issues faced by probation, i.e. the relationship between practitioners and individuals, managerialism, 'deskilling' and others discussed above and in the course of the thesis, can be more holistically approached. In the task, some have briefly gone back to the early stages of probation to emphasise the purpose for which the service was established and how it is now shifting to a reality of operation of contentious purpose and effectiveness (Fitzgibbon et al, 2013; Canton, 2012). In contemplation of what probation represents and its foundational block as the belief in the ability of people to change,

*“history is a reminder that some modern bedrock assumptions – that probation is or should be punishment, that its purpose is to reduce the incidence of reoffending and to protect the public – have not always been part of probation’s self-awareness and are neither self-evident nor incontestable.” (Canton, 2012, p.578)*

It is thus argued that the starting point in exploring the later reviews of probation practice and attitudes is the acknowledgement that the fixation on public protection and meeting of targets has not always been the defining characteristic of the Probation Service in England and Wales. The reminder that people can change is a pivotal observation for the purposes of the present enquiry. It constitutes a re-introduction of balance in the disposal of the various duties of probation officers that compliments the centrality of dignity in the nature of human rights. At the core of the human rights philosophy is that recognition of the inherent dignity of human individuals and the need for that quality to be respected by the state and its authorities. It is that dignity that probation officers are invited to uphold by preserving the belief in rehabilitation and the ability of offenders to change. However, in the current era of managerialism, politicisation of punishment and understanding effectiveness as ‘reduced reconviction rates’, the role of probation is shaken to say the least, while the need for a humanist reorientation becomes more and more pressing (Canton, 2012, p.579).

In the aftermath of the events of August 2011, the observations in terms of treatment of individuals and the importance of the practitioner-individual

relationship have been further highlighted. The riots of 2011 across England lead to prosecution and convictions, and in turn to community sentences and probation supervision upon release. Although the present focus is not on the exact political background of the riots themselves in response to the shooting of Mark Duggan, suffice it here to say that the anti-police motives expressed by the rioters are symptomatic of the wider punitive attitudes of criminal justice agencies and institutional racism of the police at the time. The licences and MAPPA risk management under which the rioters were put prove insightful to this study's focus as these were reflective of the continuation of the above attitudes into the probation stage as well:

*“by ‘tick box’, a focus on cognitive therapy and similar programmes [...] poorly designed assessment tools which encourage limited timescales to promote speed and electronic workflows which prioritise completion [...] and] the view of rioters as ordinary, if not ‘mindless’, criminals in need of exemplary punishment.” (Fitzgibbon, 2013, p.453)*

What this means is that not only the Probation Service continued the very attitude and treatment of individuals which had partly stirred the indignation and subsequent rioting activities. It also presents how the probation officers found themselves now ‘trapped’ in the overall punitive and managerialist tendencies of the system, in the same way that they have been limited by the misguided need to make defensive decisions. Following on from the implications of defensive decisions examined earlier, it is worth mentioning here how they further influence the operation of the service when in combination with recent waves of increasingly punitive approaches. It is thereby argued that the ‘trap’ in which the

probation officers find themselves is on the one hand constituted by the wider criminal justice tendencies and on the other that fear of 'getting it wrong' as well as the criticisms that follow it (Nash, 2012). This duality of meaning and source of trapping of the probation officers becomes pivotal in the unpacking and appreciation of attitudes. What the acknowledgement of that defining duality implies is how the attitudes of practitioners are not actually their own: they have been rather constructed in the wider socio-political context of the CJS and eventually imposed on and adopted by the probation officers in an attempt to eliminate that prospect of 'public vilification'. Indeed, Fitzgibbon's (2013, p.453) interviews with probation officers in the aftermath of the riots revealed how

*"The sentences were passed to appease the public and the media. The riot was an aggravating factor but the sentences were disproportionate. It was a knee jerk reaction and in the long-term it's not going to help the rioters."* (CA, probation officer)

It is noted that it is one thing to identify or even speculate the existence of that defensiveness and unsuitability of attitudes, but it is a quite different level of credibility when the acknowledgment of the situation comes from the practitioners themselves. This confirms the construction and imposition of the attitudes and brings to the surface the implications the matter bears for the rights of offenders. The recognition of that very 'disproportionality' in sentencing and management of offenders holds connotations in terms of both possible human rights violations as well as willingness of ex-offenders to cooperate with the practitioners. On the one hand, a disproportional sentence in the community has greater possibility of interfering with the rights of the supervisee; as

discussed later in the case law analysis section of the thesis, unnecessarily restrictive license conditions lead to interference with human rights to private and family life, liberty etc. On the other, a disproportionate to the situation and individual needs management plan would be more likely breached if the individual feels that it does not exhibit any prospect of supporting them in their reintegration journey. If that is followed by breach of a license condition it may eventually lead to recall to prison and thereby further limit the prospects of rehabilitation. That is to say the constructed punitive attitudes are not only regenerated through the different stages of the criminal process; they further interfere with due process in the form of rights violation and indirectly impede the process of rehabilitation of offenders.

Recent observations on the aftermath of the 2011 riots and the management of rioters have shed light to additional noteworthy observations in terms of the relationship between practitioners and offenders. The starting premise is not as we have seen in earlier literature to track and review practical elements of a given supervision arrangement, i.e. frequency and duration of meeting with individual, engagement with life histories and individual needs, contact with friends and family of the individual and so on which still remain paramount in the development of a working practitioner/individual relationship. The discourse here turns to who the offender is, namely the rioters and what are their characteristics. Standing (2011) has indeed explored the area in question and notices that there was some prevalence of certain qualities or attributes which can to some extent be considered transferable to various types of offenders: they include insecurities in term of employment, income and representation, low wages, limited employment and education skills, limited career prospects, and

an overall background of deprivation of opportunities. Fitzgibbon (2013, p.18) has in her relevant study reviewed those observations and characteristics and interestingly identified that

*“That the rioters faced many of these forms of insecurity is commonplace. What is much less so is that many of those working in criminal justice agencies tasked with supervision of sentenced rioters have themselves many similar characteristics.”*

She specifically refers to how in the new reality of probation, professionalisation has decreased, career advancement prospects appear limited, under-developed or limited sets of skills due to lack of training and general ‘deskilling’ through managerialist processes, and an apparent lack of cohesion, unionisation and trust to the service or the system in general. The list complete further troubling attributes of the practice which have been discussed earlier in the current study too, such as interchangeability and shortage of staff, fragmentation, detachment from their social role through impersonal relationships with individuals and preference to para-professionals rather than trained, qualified staff in the interests of expediency and expendability. This connection between practitioners and individuals based on common characteristics is indeed informative in two respects; namely its historical importance, and further understanding of the effect of the emerging attitudes on human rights. Firstly, it re-establishes the observations made above as to how the service has moved away from its previously rehabilitative and social focus to one of defensiveness, defensibility and expediency: *“With the distancing of probation from this role, empathy and a humanistic approach to offenders has*

*been substituted for a concentration on monitoring and risk assessment."*

(Fitzgibbon, 2013, p.19). It becomes fair to contend that the introduction of almost mechanical modes of assessment and limited personal and constructive interaction with service users have contributed to the detachment of the practitioners from their wider working community. Treadwell (2006) also notices this detachment and explains that even the gaps and shortcomings in the qualification stage of trainee probation officers that focuses on the vocational element at the expense of the academic are again symptoms of a probation service distanced from its 'social work roots'. This exactly parallels the way that rioters and by extension ex-offenders as a whole have been detached from their communities of care due to political and popular exclusion as well as recent correctional rather than re-integrative initiatives and attitudes. It thereby follows that contentions as to how "*the role of the probation service in recent years has changed and become increasingly demanding and punitive*" appear to have remained topical at various points in time when these professional attitudes are considered. (Treadwell, 2006, p.2; citing Goodman, 2003). It follows that both the probation officer and the offender become victims of a professional insecurity and 'deskilling' that leaves the former increasingly distanced from due process and only concerned with 'getting the job done'; while at the same time almost pushing the latter into further criminality in a punitive service that cannot address the needs of its users to start with. Even more importantly, this juxtaposition of the two groups brings back the question of alienation, which we have in previous parts examined from the perspective of the individual. It has earlier been contended how the alienation of offenders is manifested in the community by both the public and the media as well as the probation officers through the above attitudes of reactive and 'detached' nature. The connection



above, however, introduces yet another dimension of alienation, and this time the group in question is the practitioners rather than the offender; evidently

*“Large sections of probation workers are now un-unionised and have adopted a more punitive stance. There is a lack of social solidarity with other probation staff [...]. They feel alienation from both their probation profession and others within it.”* (Fitzgibbon, 2013, p.19)

This is to say that alienation is a recurrent and multilateral issue in the rights culture discourse of probation practice. It has become apparent above that probation's culture of managerialism, decreasing rates of personal interactions between officers and probationers, as well as the lack of sufficient communication among the different agencies have alienated the practitioners not only from the individual but also their colleagues, managers and by extension the unity and multi-agency character of the service. It is thus contended that another level of alienation may be introduced. The socio-political and popular influences on the probation service have been discussed in academic opinion which this project has referred to but, it is a rather novel dimension to express that influence or level of criticism in terms of alienation. The argument goes the culture of fear and mentality of 'getting it wrong', the persistence on defensiveness, and public criticisms along the lines of 'being soft on criminals' have fostered a wider circle of alienation of practitioners this time from the public at large. This crucially brings back the question of construction of attitudes: it is no surprise that the probation officer – now alienated from the public, their colleagues and the system which they serve, attempt to gain the trust of the people and reintegration in their working community through

adopting punitive attitudes. Regrettably, this in turn only succeeds in further alienating them from the individual and their wider social role and expectations.

Secondly, the culture of detachment and cycle of alienations have a direct impact on the rights of offenders and thus the approach of practitioners when balancing the competing interests of the many with the interests of the 'other' few. In tracking down the apparently many facets of alienation, it becomes apparent that its source or origin remains a disproportionate focus on certain considerations at the expense of the rights, interests or rehabilitation of offenders. Accounts of the 'problematic of attitudes' insist on the realisation how

*"These attitudes are indicative of the focus within a probation service which currently primarily concerned with risk and offenders taking responsibility rather than with notions of re-integration and rehabilitation."* (Fitzgibbon, 2013, p.18)

A fixation of probation as yet another form of or 'second' punishment along with relevant construction of attitudes that prioritise a need for individuals to take a misconstrued responsibility by way of further unnecessary and ineffective restrictions upon release only means the neglect of their rights. It is noted at this point that in appreciating the attitudes and their effects further attention is needed on the connotations of 'responsibility' and how it is projected in the neoliberal context of probation. Collett (2013) reminds to that end the relevance of social class to the probation service, and how that connection reflects the assigning of responsibility of reintegration to a marginalised group of the society, i.e. the offenders. The starting point here is how through the current dysfunctional practitioner-individual relationship, the probation officer has lost

touch with who the offender is, what their background is and how that affects or should affect their decision-making process. The discussion around the riots above, and the rioters more specifically, confirm the wider idea of oppression of lower classes through the establishment of a meritocratic, capitalist society. Although the 2011 riots were a response to the shooting of Mark Duggan, it is asserted that those courses of action or expressions of unrest represent a reaction to a form of injustice which the thesis interprets as professional attitudes that have been distanced from the humanistic, social and reintegrative values of the service.

It becomes thus noteworthy to consider whether such a background exists in the management of offender. What this means is that if an ex-offender was or continues to be after their release under a situation of limited access to opportunities compared to other members of their community then, that may worsen the alienating attitudes in the form of economic or other marginalisation. Indeed, even within the context of probation,

*“We tend to talk in subtexts about, for example, vulnerability, disadvantage, marginalisation, inequality and poverty without anchoring these social and economic features in the overarching collective experience of local communities. [...] we also find difficulty in acknowledging the cultural strengths and diversity of working-class life as well as the problems and challenges faced by ordinary individuals and families.”* (Collett, 2013, p.167)

Nevertheless, it is not the purpose here to explore the wealth of literature around social class and criminality and early Durkheimian ideas, strain theories

or later contributions of realist criminology. What remains relevant though to note is the extent that that classist reality affects the interests and rehabilitation prospects of individuals in their risk management journey. The current climate of alienation, fear of criticism and defensiveness as the guiding principles may all be further indicative of the influence of neoliberalism, which culminates on that disproportionate focus on the individual initiative and the shift of offender management from the social and rehabilitative to the punitive and correctional. The part-privatisation enterprise constitutes yet another attempt of the state to divert responsibility away from the centre with associated implications for the accountability and transparency of the relevant interventions and measures. In contemplation of the above, Collett (2013, p.182) accurately concludes that

*“Probation will, therefore, be faced with seeking to rehabilitate offenders who already consider themselves the subject of coercive State intervention in an environment of ever-limiting material opportunities. [...] [E]ffective supervision is ultimately a moral activity – one that engages the values, outlook, personal strengths and capacities of the individual offender and which should aim to bring citizens together in a greater understanding of their inter-dependency and mutual interests rather than as a means of separating and further alienating those who offend”.*

The inferences above can be further re-interpreted in terms of ‘knowing the offender’ and their rights. Recognising the experience of coercion from an early stage means that the probation officer will be in a position to address the problem more systematically and manage the risk of reoffending in cooperation with the individual. An otherwise intrusive treatment through extensive

surveillance or tagging, impersonal reports and unnecessary invasions of privacy and liberty as alternatives to a closer synergy can only interfere with the relevant rights and cement the non-cooperation of offenders. It is reminded here that human rights are, if anything, a form of check and balance on the abuses of power by the state and its agencies. The very diversion of responsibility from the state to the individual implicitly constitutes a manifestation of such an abuse which in turn limits the prospects of community reintegration. The recommendations enclosed in the European Rules of Probation 2010 effectively advocate for the need of that social reintegration and makes direct reference to the terms 'social inclusion of offenders' and 'community safety', 'complex needs of offenders' and 'community safety' as tenets of probation. This further implies how responsibility does not rests solely with the individual: responsibility, reintegration, public protection and rights work in tandem and synergy (Canton, 2013).

It is hereby contended that respect for the human rights of the individual does not only mean the respect and provision for the interests of the 'critical few'. It is rather in the public interest for the rights of the offender to be respected exactly because such an attitude can better sustain and contribute to their rehabilitation. What thus the socio-political and popular perceptions miss is that the rehabilitation of offenders mean the protection of the public; making provisions for the reintegration of offenders means lower risk of re-offending; respect for the rights and interests of the individual is in the public interest because it is only then that the individual entertains any prospects of rehabilitation. It is therefore held that rights and public protection need not be balanced out as two competing interests but rather as two parallel forces

working in synergy. There is indeed an inter-dependency between the two, and it is exactly when the service starts treating them as two separate, 'detached' considerations that conflict and alienations arise.

c) MAPPA: Back to square one?

Multi-Agency Public Protection Arrangements have received attention by academic and political opinion since their introduction in 2001. Following its statutory establishment in the Criminal Justice and Court Services Act 2000, the term typically refers to

*“the means by which the police, probation and prison services (working together as the ‘responsible authority’) carry out their statutory responsibilities to assess and manage the risk of harm posed by sexual and violent offenders.”* (Jewkes and Bennett, 2013, p.173)

From its outset the definition above appears to have the notion of cooperation as a central aspect of MAPPA. Cooperation among the different agencies is hereby presented as a key consideration for the fulfilment of the aims of assessment and management of the risk posed by violent and sexual individuals. It is also noted that the focus of MAPPA remains on information sharing in relation to sexual and violent offenders; and, although not a statutory body in itself, the relationship of cooperation and apparent interdependency among police, probation and prisons is one enshrined in the framework's policy and structure. Although comprised of three distinct agencies, the underlying rationale of 'responsible authority' is that they constitute a unified entity when it

comes to the practice of offender management. Despite the individuality and differences in practice, aims and contact, the aforementioned cooperation is expected to be a close one based on communication and exchange of information and expertise that could not otherwise be obtained by the agencies. That communication is not meant to take place solely among the three cited agencies but also includes other relevant agencies, such as mental health practitioners, social and children services and even housing and accommodation providers.

MAPPA have been viewed as an exemplary initiative of promising partnership which, nevertheless, has at times been met with certain extent of scepticism in regard to its practical benefits. Bryan and Payne (2003, p.20) suggest that *"MAPPA represent the biggest step forward in public protection in the last 15 years"* which have managed to tackle the issue of deficient inter-agency cooperative working within criminal justice. Although they admit their complexity, they explain how MAPPA present a genuine partnership that promises the involvement of external agencies and the community, accountability and rationalisation of the relevant legislation (Bryan and Payne, 2003). It is noted though that this evaluation comes shortly after the introduction of MAPPA. That is to say similar over-optimistic analysis of the regime may be approached with caution, especially in view of the pre-existing socio-political context.

However, they may in certain instances prove problematic and potentially creating additional areas of concern for all the agencies involved. In the first instance, as much promising as the prospect of cooperation and multi-agency

involvement might seem, it can also be equally challenging. The idea of having distinct agencies and many professionals managing the same case bears as *“great a chance of losing sight of the offender as there is in knowing him better.”* (Nash, 2010, p.85) The withdrawal of caseload, lack of adequate direct contact and involvement, and alienation of the offender already constitute realities of probation practice, and thus the danger of ‘losing sight of the offender’ within a complex network of professionals becomes even more imminent.

The origin of criticisms on MAPPA’s human rights implementation can be traced back to the infamous murder of Naomi Bryant by Anthony Rice in 2005 who had been released from prison and was under the supervision of the Probation Service as a MAPPA offender at the time of the offence. The suggested justification for the attention the Rice case has gained is not so much based on the nature of the crime committed, but rather on the fact that it could have been avoided, and how that revealed pre-existing, cumulative systemic faults (JCHR, 2006; Nash, 2010). The relevant enquiry indeed revealed that Anthony Rice was unknown to most of those involved in the management of his case, there were miscommunications among the different agencies with ensuing non-sharing of information linked to his risk of reoffending, and non-inclusion of biographical data in the relevant deliberations (Whitty, 2007).

Central to the discussion of the Rice case, and by extension to the arguments raised in this study, is the way the human rights considerations were used as a scapegoat for the above institutional failings. Whitty (2007, p. 268) finds that in addition to poor communication, resource limits, the arbitrary use of risk tools, and lack of discussion of crucial information in the MAPPA meetings, there was



also lack of any evidence provided in the Inspectorate's report to substantiate the claims regarding prioritisation of Rice's human rights (JCHR, 2006, p.14): it is indeed noteworthy to reiterate the stark difference in attitudes in

*“the ease with which 'human rights' was constructed as the obstacle to effective risk management [...] as camouflage for the administrative failings (and known limitations) within MAPPA [...but,] despite the clearly-identified failures of risk-based practices, no similar groundswell of criticism developed against risk expertise.”*

This highlights the importance of attitudes in the area of the thesis, and how more pertinent it becomes to consider in view of the above whether this imbalance in attitudes persists and whether, if at all, it has affected the perceptions of probation officers too. In that respect, the study represents a direct response to that “[i]t would be very useful to know, for example, the exact nature and extent of human rights (law) knowledge held by the different MAPPA actors”, and thereby addresses the gap in “that we know very little about how UK public sector organisations are 'managing' different risk-base and rights-based obligations and goals.” (Whitty, 2007, p.274-5) Addressing these gaps in the MAPPA framework becomes increasingly crucial because they further undermine its reliability: a cooperation-oriented regime with disproportionate focus on risk that exhibits issues around maintaining inter-agency communication and contact with individuals and human rights misconceptions may not be in an accountable position to respond to the very purposes for which it was established.

More specifically, Wood (2007, p.470) also acknowledges the entrenched scepticism as to the actual level of cooperation among the various agencies

*“with all studies identifying ongoing difficulties with ensuring consistent agency representation, particularly in relation to mental health services, across all three MAPPA levels”.*

Although Rice’s case has directly addressed human rights concerns in probation practice, it is by no means the only one which deals with questions of ‘cumulative failures’ as these do appear to persist to the present day. McCann was charged with multiple offences of kidnap and rape while under MAPPA supervision which led to an independent HMIP (2020) review into the case. What it considers as the main cause of the SFO is the failure of the probation staff to recall McCann on eight separate occasions when there had been evidence of possible revoking of his IPP licence. The reasons behind these though appear to include over-reliance on OASys as opposed to inclusion and analysis of his behaviour post-release, no adequate mental health assessments, lack of clarity on recall decisions, and no provision of accommodation appropriate to his circumstances (HMIP, 2020). Even more concerning proves to be the situation of the probation network responsible for McCann’s supervision which exhibited instances whereby the review reports multiple probation officers managing his case at different points in time with some lacking the experience the complexity of the case required, high staff vacancies, excessive workloads, limited contact and high demand for bed in AP’s. It thereby follows that what may initially seem as an oversight or over-optimism in the risk assessments of the practitioners is in essence the product

of the shortcomings and persisting challenges the service has been faced with and unable to address due to lack of resources and relationships.

The above observations remind of the fact that different individuals exhibit different criminogenic needs and certain cases may necessitate the involvement and consultation of various professionals outside the criminal justice boundaries. The non-inclusion of the insight of a mental health professional in a case of mentally disordered offender can only lead to their incomplete assessment and the draft of a supervision plan not fit for purpose. What Wood's (2007, p.478) enquiry highlights is how the effectiveness of MAPPA depends on the recognition that "*the type of violence perpetrated is an important distinguishing factor.*"

Remaining on the realms of mentally disordered offenders, Green (2005) notices yet another potential threat coming from MAPPA, namely that of shaming and double stigma. He explains that the tick-box and bureaucratic character of MAPPA does not do justice to the case of the mentally disordered offender who is already in a stigmatised and isolated from the community condition. This type of offenders would more easily find themselves in a disadvantageous position within MAPPA. Their limited learning and employment prospects along with no signs of close familial or other relationships, which are well-known risk factors in the majority of individuals, would justify restrictive supervision plans that would in practice not respond to their specific criminogenic needs and increase the potential of unlawful human rights interferences (Canton, 2009).

The realisation that MAPPA must appreciate the links among inclusive assessments, types of criminogenic needs and rights also means that neglect for individual's life background can have a negative impact: in the first instance, upon the aim of 'knowing the offender', and then, by increasing the probability and fears of 'getting it wrong' in responding to the risk of harm. Murray (2013) writing within the remits of the term she coined as 'veteranality' and how veteran offenders are perceived by criminal justice practitioners, highlights the centrality of considering each individual or groups of individuals on probation as separate entities with differing needs and histories. The veteran offender demonstrates this individuality in distinctive characteristics they exhibit, i.e. transition from military to mainstream, trained to kill, 'suffering in silence' (Murray, 2013). She asserts that lack of acknowledgement of the veterans' special criminogenic needs, their vulnerabilities or how the public perceives them and their crimes – compared to when the same are committed by civilians, cannot allow the necessary contextualisation of the risk of reoffending of this particular group. This means that it is only by knowing the individual better, from past offences and life history all the way to their responses to re-offending, that the risk involved can be contextualised and thus managed based on an inclusive, humanist assessment.

Cooperation and the type of offender, as central as they are, are not, however, the only matters facing the framework. MAPPA criticisms have further focused on the process of sharing of information and the resource allocation along the different stages. Despite the overarching duty of cooperation among the agencies in question, they always remain distinct to one another and in most instances they do not necessarily "*share their view of risk and need for public*

*protection*” (Nash and Walker, 2009). They also add how certain agencies may place less importance on the demand of cooperation with the results of late notifications, non-sharing of information, and having no known points of contact in case they find themselves in need of immediate advice from another service.

An equally unfavourable situation is seen in terms of the resources devoted to MAPPA. The relevant concern is whether the allocation of resources to MAPPA-related procedures is justifiable and responds to the number and needs of individuals under the framework. In other words, it may be worth considering, as Witty (2007) suggests, whether devoting resources to an inherently complex and cursory process of bureaucratic and uncertain character could be the answer to the balancing equation the practitioners are invited to solve. But even if the allocation of resources is accepted, the priorities upon which these are to be distributed constitute an equally troubling consideration. There has been a tendency of accumulation of resources towards the supervision of released high risk offenders which means the lack of resources during the earlier stages of assessment (Nash, 2010). For the majority of cases, the initial assessments constitute the first point of contact between individuals and practitioner and as such it may be considered a determinant phase in understanding the situation of the individual and the formation of subsequent attitudes towards the offender and their rights. It appears that as long as ‘resources follow risk’, limited resources may be allocated to stages or initiatives that can support the development of that working relationship between the individual and their probation officer, or indeed to the management of less complex cases who, nevertheless, may as well reoffend if their needs and rights remain unaddressed (Bawden, 2009).

It thereby becomes mostly pertinent to use MAPPA as a template to examine the arguments, research questions and balancing act with which the thesis is concerned. The multi-agency character, the focus on risk management and high risk violent and sexual offenders, and the background of information sharing upon which the framework operates altogether provide an excellent environment where human rights considerations come alongside risk and public protection expectations with the practitioners having to engage with balancing the two. On the matter, Scott (2002, p. 23) too supports that following the duties expressed in the HRA, the service needs

*“to ensure that statutory and voluntary agency partnerships add to the human rights culture in the CJS and beyond. The Multi Agency Public Protection Panels are a prime example of a development which will benefit from being located in a Human Rights At 1998 framework, within which the dilemmas and community tensions can be assessed and rationally accounted.”*

The extent that the framework has in response formally reintroduced human rights into its rationale and practice though remains contentious. The MAPPA Guidance 2012 does make direct reference to human rights in certain places of the document which are worthy of consideration in the present context. In the relevant paragraph [9.5], the guide reminds that the main purpose of MAPPA is information sharing among the agencies for more effective risk assessment and management, but then stipulates that the rights of individuals *“will tend to limit what can be shared.”* (MAPPA Guidance, 2012, p.53) It then continues to instruct that in order for the agencies to strike this balance they need to have a

clear understanding of the applicable law and specifically refers to the Data Protection and HRA 1998<sup>3</sup>.

In its attempt to clarify the relevant legislative principles in regard to the HRA, the 2012 guide explains firstly the notion of legality or 'in accordance with the law' that indeed represents a vital human rights consideration especially in regard to qualified rights of the ECHR. However, all that the relevant paragraphs provide [9.6 and 9.7] is that the information-sharing in which MAPPA agencies engage is lawful because there is statutory permission for it in section 325(4) of the Criminal Justice Act 2003, and even when the sharing takes place between a MAPPA and a third-party, non-statutory agency, the exchange remains in accordance with the law as long as it does not breach the common law duty of confidence. It is thereby contented that this direction provides limited guidance as to the implications of the concept. The requirement of 'in accordance with the law' applies to Articles 2, 5, 6, or 8 to 11 and establishes that for the interference to be lawful in the first instance there must be basis in the national law of the country for the official action that caused the interference e.g. s.325(4) of the 2003 Act in the case of information-sharing above. However, Hoffman and Rowe (2013) note that there is a second aspect to the requirement of legality, namely that the relevant law is accessible, precise, sufficiently clear and does not give too wide a discretion to officials so that everyone is able to know what the law is and how it applies. The MAPPA guide does not appear to address the second requirement or provide a more

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<sup>3</sup> The Data Protection Act 1998 is outside the remits of this thesis and as such the focus of the discussion remains on the HRA.

elaborate explanation of the requirements of legality and its connections to the rule of law.

Secondly, the document attempts to address the principle of necessity and defines that by reference to Article 8 of the Convention. It outlines the legitimate aims upon which an interference with this article can be justified, and states that information-sharing within MAPPA satisfies the condition of necessity because it is always employed in the interest of prevention of disorder or crime or administering justice. There is thus an alleged assumption that MAPPA's information-sharing is not excessive or unreasonable. This again provides a limited and over-simplified approach to the principle of necessity. Although there is scope to suggest that information-sharing is in the interests of prevention of crime and disorder and the Convention does afford a 'margin of appreciation' to member states, 'administering justice' is not one of the legitimate aims included in Article 8(2) below, and rather seems one that the guide has assumed from context;

*“There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”*

Also, necessity does not only apply to Article 8, but all qualified Articles 8-11 and elsewhere in the Convention. It is further argued that the guide makes a



blanket assumption in that “*information-sharing by way of MAPPA is not an excessive or unreasonable way of assessing and managing these risks.*” [9.10] This cannot realistically be declared as of fact for each case and every possible set of circumstances that may be encountered in the process of offender management given the subsequent discretion that is exercised by the agencies when sharing information. The extent that this is excessive or unreasonable is a question of balance and degree that is rather determined on a case by case basis. Even if the assumption could be sustained, the requirement of necessity would still not appear to be met because the central aspect of necessity is that the action that caused the interference must go no further than is necessary and that is actually “not the same as ‘reasonable’, ‘ordinary’ or ‘desirable’.” (Hoffman and Rowe, 2013, p.123) There are instead three aspects that need to be addressed in meeting the requirement of necessity, i.e. the measure must be addressing a social need, pursue one of the legitimate aims outlined in the applicable article, and a relationship of proportionality in the means it uses to achieve the legitimate aim (Gerards, 2013) Although reference to legitimate aims is made in the guide, the rest of the conditions do not seem to be explicitly addressed.

Lastly, the MAPPA Guidance addresses the principle of proportionality and the overarching contention that information-sharing must be in all instances proportionate. The document appears particularly brief in its explanation of proportionality; all it notes is that in human rights law this means doing no more than is necessary to achieve a lawful and reasonable result, and then applies the direction to information-sharing whereby it translates into sharing no more information than is needed to manage the risk [9.13]. Proportionality is at the

heart of the Convention and the above adaptation is incomplete in its definitional approach. Although the ‘doing no more than is necessary’ instruction may be considered relevant to the notion of proportionality, academic and judicial opinion hold that where the interference is proportionate, “*the extent of the interference covers only the purpose which justifies it, and does not go beyond it*”, and in the assessment of this extent a court must consider: the objective of the legislation, the measure’s connection to the objective, the measure is not arbitrary, unfair or irrational, as limited impairment of the rights as possible, and that the interference is not so severe that it outweighs the objective (Hoffman and Rowe, 2013, p.126 citing *De Freitas v Permanent Secretary of Ministry of Agriculture* [1999] 1 AC 69). It thereby follows that the representation of proportionality that the guide provides may create misconceptions as to its extent, scope, applicability and importance within the MAPPA framework.

Other general observations on the 2012 guidance’s approach to human rights include the merging of the two aforementioned Acts, the exclusive reference to information-sharing, and the role of the meeting Chair. In the first instance, the document appears to examine the above human rights principles alongside the DPA ones in a way that at times it becomes unclear which requirement applies to or emanates from what Act without having prior knowledge on the topics. Moreover, the guide only examines these principles and requirements from the perspective of information-sharing without reference to any other situations or circumstances in the course of MAPPA that may raise human rights considerations. Although the framework focuses on sharing and exchanging of information, this does not mean this is the only action taken by practitioners in

their MAPPA-related duties that may lead to human rights interferences, or that indeed there may not be other instances in the variability of processes and situations encountered in offender management that may engage the human rights of the individual or the victim. Added to this, the exclusive reference to Article 8 may similarly be considered misdirected. While the Article 8 rights to private and family life, home and correspondence may indeed constitute the ones that bear more potential to be interfered with due to the nature of restrictions that license conditions and other probation measures impose, it does not mean that the rest of the Convention rights are irrelevant. Article 5 right to liberty and security may also be potentially engaged for example, in cases of curfews or recalls. What is more concerning with this observation is that not all Convention rights are qualified: there are also absolute, such as the right against torture (Art 3) and limited rights, such as the right to life (Art 2). In the case of the former, there shall be no interference in any circumstances whatsoever whereas in the case of the latter there may be interference in a very specific exhaustive set of situations that differ among limited rights and are explicitly outlined in the wording of the article. It thereby follows that the guide's lack of reference to these categories may create the misconception that any human right may be interfered with as long as the interference is necessary and proportionate.

Scott and Ward (2000) recognise shortly after the introduction of the HRA that there are various levels upon which human rights violations may arise in the context of probation; these appear to be based on the different categories of rights found in the Convention and their relevance to the type of restrictions seen in probation frameworks of the MAPPA character (Scott, 2002). These

constitute primary (day-to-day practices that may limit freedoms of individuals through e.g. license conditions), secondary (third party practices for which probation assumes responsibility via their management of the individual) and tertiary (actions of seconded probation officers into other criminal justice settings). These are further demonstrated in the case law analysis later in the thesis, but suffice it here to say that the categorisation does go further than disclosure of information and considers applicability in situations such as deaths in the course of the RMP – either of the individual or a new victim, living conditions in APs, and imposition of discriminatory conditions that result in violation of a human right. These not only represent the substance of Articles 2, 3 and 14 of the Convention respectively, but also reveal the limited extent to which the MAPPA guide has engaged with human rights implications.

The guide further provides that “*the chair of the meeting should ensure that all present are satisfied that decisions taken at the meeting comply with the Human Rights Act 1998*” [13a.32]. This introduces a promising control in ensuring human rights compliance and raising awareness, but the document does not go any further to explain how this human rights-specific quality assurance should take place and what questions may be asked to ensure it goes beyond mere acknowledgement. Also, based on the minutes structure the guide includes, the HRA validation comes at the very end of the meeting with no other human rights reference elsewhere which creates questions as to the importance assigned to the matter, the attention this receives in instances of long, complex meetings or where the attendees cannot stay for the entirety of the meeting.

The references and gaps that the examination of the MAPPA Guidance 2012 above has revealed further confirm the necessity of the thesis' enquiry. The attitude of the guide towards RMP is relatively clear in para 12.31: "*As a general principle, the human rights of offenders must not take priority over public protection. [...] Proportionate protection of the public outweighs all other considerations when constructing an RMP.*" Nevertheless, it is notable that in the same paragraph it states that the measures taken must be limited to the minimum necessary, and regard to be given to the needs of vulnerable individuals without allowing that though to take precedence over public protection. It thereby becomes pertinent to consider whether the probation officers are aware of the human rights references in the MAPPA guide, whether they find the relevant guidance it provides sufficient and satisfactory, whether the guide's attitude is reflected in their attitudes towards human rights and public protection, what is their understanding of necessity and proportionality, their experience with HRA validation in panel meetings, how they apply the document's limited direction to their caseload or whether the guide's direction has given rise to any specific human rights practices.

## **C. Victims and Probation: Rights, Impact and Restoration**

### **a) Victim-Centred Developments and the Role of Probation**

The adoption of victim-focused initiatives within criminal justice services has been a sensitive matter and one that has attracted considerable research into the complexities of the experience of victims (Madoc-Jones et al, 2015; Walklate, 2007; Dubourg et al., 2005). A main response to victim movements was the 1990 Victim's Charter which focused on examples of good practice and the momentum in raising awareness on the needs of victims throughout the CJS (HOCD, 2001). The focus appeared to be on the police in the subsequent relevant circulars, with Probation having an active input only in terms of the establishment of the education-based Lothian Domestic Violence Project (CHANGE). Despite its promising nature for the case of the victim, the Charter did not appear to have achieved the practical effect of moving the victim from the periphery to the centre. Even almost a decade after its introduction, Williams (1999) observes how *"[i]t created no new rights or remedies for victims of crime, and was widely criticised as a merely cosmetic 'wish list'"* (citing Cavadino and Dignan, 1992; Mawby & Walklate, 1994; Fenwick, 1995). Indeed, the Charter did not formalise any victim rights into law or policy.

It is noteworthy though that subsequent Probation Circulars 61/1991 and 77/1994 did create certain duties for the Probation Service which depart from the mere impersonal contact the practitioners previously had with victims (Kosh and Williams, 1995). Following their introduction, the service is expected to provide information to the victim regarding the individual's progress in prison,

obtain information from the victim about their concerns or suggestions, and consult victims and victims' families in their management of offenders in order to identify possible anxieties the release of the individual could cause. Further, the probation officer is invited to consider whether their work with victims is adequate in the sense that the interests, wishes and opinions of victims are represented in the process.

The Charter does appear to exhibit the first signs of probation's victim contact scheme, but the fact that it did not generate victim participation and engagement to the desired level, partly explains the additional developments that followed in the years between 1994 – 1996. A prominent victim initiative was seen in the 1995 New Probation National Standards whereby there was a requirement for probation officers to include the views of the victim in Pre-Sentence Reports. Nevertheless, it has been noticed that the legal basis of the Circulars and subsequent developments was questionable, and the practical effect of the Charter remained limited to guidelines that were scarcely followed by the service (Craig, 1994; Baldwin, 1994). Even at this early stage of victim considerations, it may be contended that although government and authorities at the time showed a newfound interest towards developing victim-centred initiatives these appear ambiguous and insufficient.

The relevant initiatives may have thus only managed to create the appearance of care towards the victims of crime with no substantial outcomes. Following the academic scrutiny regarding the lack of victim participation in CJP's (Williams, 2002; 1999), the relevant studies identified political eagerness in hushing those criticisms at the expense of those mostly affected by the offence. It is

noteworthy that even though the Charter was revisited and redrafted, the main notable development is that the victims can *expect* more information and assistance. The language of the Charter itself is telling of the limited attention given to victims' rights and the broad discretion afforded to those implementing it:

*"It can be argued that the terminology of the Victim's Charters, switching from one of advocating rights to that of providing service standards, reflects the lack of theoretical coherence underpinning the reforms and the redefinition of victims as consumers not citizens"* (Winstone and Pakes, 2005, p.245)

What this means is that victims working or coming in contact with the Probation Service found themselves in a context where their most basic rights to access to justice had already been compromised. The victims are now in a situation where their needs have to 'compete' with the organisational needs of the service. Where the probation officer prioritises the latter, the victim remains a 'passive consumer' in the market of a managerialist justice (Winstone and Pakes, 2005). In such an environment the rights of the victims become secondary, provisions for victim participation are delayed due to limited resources, and victims' needs do not receive the attention of the authorities otherwise responsible for victim notification. In essence, the early allegedly victim-focused initiatives may have not only kept victims to the periphery; they have also broadened the discretion afforded to practitioners and created a deceiving appearance of care (Burrows, 2013).



The provision of information to victims as a probation-driven duty was beginning to gain impetus in the 2000s. This was reflected in the Criminal and Court Services Act 2000 which places a duty on the newly-formed NPS to inform victims of violent and sexual offences of the individual's expected release date. The same year, the PSR requirements were further updated to now include offender's acts of reparation to the victim. Another promising initiative in terms of probation obtaining information from the victim is seen in the introduction of the Victim Personal Statement (Home Office, 2001). It represents an avenue by which victims can express the psychological, physical and any other type of impact the crime has had on their lives. It is noteworthy that in other jurisdictions VPS had for years been considered "*the principal means by which crime victims can communicate to the CJS the impact of crime on their lives and those of their families.*" (Wells, 1990) The element of communication of their concerns and the impact experienced is key because it implies a form of involvement and participation of the victim in the justice process. There has still been considerable room for improvement as questions along the lines of how it should be designed and treated by officials, and what its purpose and meaning are for those contacting victim work remain unanswered (VPS Review, 2015).

It appears unclear though whether the VPS has been adequately utilised within the probation context especially in regards to victim awareness (Burrows, 2013). It is argued that a closer examination of the VPS at the probation, and not just the sentencing, stage could result in more comprehensive understanding of the impact of crime on the victim and direct incorporation of this perspective in offender management plans.

The questionable effectiveness of the above developments in probation and the political unwillingness in contextualising their needs into rights are further put into the test when the victim actually experiences these services. Crawford and Enterkin (2001, p.712) notice that victims were exhibiting hesitation and uncertainty in accessing the contact services provided by Probation, not least because they could not comprehend the binary nature and conflict of interest of an agency working with both themselves and the offender. The authors also note that even though the surveys conducted did show a relative satisfaction with the practical assistance and notification schemes that went beyond emotional support, the information was not always provided in a timely manner due to miscommunication among the agencies involved and lack of clarity of responsibilities and expectations within the scheme itself (Crawford and Enterkin, 2001). This is not surprising as probation officers received little direction, training and support in implementing these new duties, the approach remained piecemeal with the then Trusts adopting different victim practices of contestable policy compatibility, and in most instances relied on the offender for information about the victim (Davies et al, 2007).

These limitations become particularly relevant to the present multi-agency context in contemplation of the fact established earlier that MAPPA does face similar challenges of miscommunication, resource availability and lack of clarity of expectations and priorities among the different agencies. Although many of the studies in the area of victim contact above may not have been conducted with an apparent focus on MAPPA, the framework is directly relevant to the victim discourse due to its exclusive work with serious violent and sexual offenders from 2001, i.e. the category of individuals whose victims have been

expected to receive the most contact from Probation. Victim work in probation requires a multi-agency approach and cooperation between probation officers and victim support agencies to compensate for the former's lack of training on victim considerations, and maintain the continuity of service provision to the victim;

*“if the victim had already received help and support from one of these agencies then it should be the same agency working with the probation service to provide victim contact services. If this were to be the case it would necessitate close working relationships between the probation service and the other agencies concerned.”* (Newton, 2003, p.34)

It thereby becomes apt to reconsider the place of victims in the MAPPA framework and, more so, what the practitioners' attitudes towards their rights are: in the first instance, the same challenges appear to affect both the operation of MAPPA and the prospects of probation's Victim Contact Scheme. What remains then equally noteworthy is to address the gap of how the two sets of rights interact and affect one another when considered by the participants of this study in management plans and license conditions.

The later initiatives that constitute a direct response to the tensions outlined above are the Victim Liaison Unit and the Victim's Code 2006 and 2015. The former may be considered an alleged remedy to probation's conflict of interest in being invited to work with both victims and offenders: Victim Liaison Officers are probation officers who work exclusively with victims of crime to ensure communication between the victim and other agencies, notify them of any

decisions or developments to their case or the progress of the offender, communicate to other agencies any requests the victim might have, such as exclusion zones, and thereby act both as a point of contact for the victim and an intermediary between victims and offender managers. The Victims Code has further formalised the responsibilities and needs of victims, clarified the duties of the responsible authorities towards them, and, as far as Probation is concerned, consolidated the victim communication and contact expectations under the VCS and the Victim Liaison and Communication scheme. These offer via the Probation Service information and advice to victims of violent and sexual offences of 12 months or more, a designated VLO, notifications of key stages of the individual's sentence and if a Parole Board hearing takes place, summary reports in cases of SFOs of the same individual, similar communication and services to the family of the victim, especially if the latter is deceased, and anything else the VLO or the Probation Service consider appropriate for the victim to know in the circumstances of their case.

What remains regrettable in the case of the above promising initiatives, the thesis contends, is that their introduction has almost coincided with the part-privatisation of the service. This has shifted most academic attention towards the early stages of the probation's transformation and its serious shortcomings and allowed only scarce consideration of the extent that the above victim developments have indeed contextualised the rights of victims in probation. This thereby reveals yet another side effect of privatisation, namely limiting the degree to which the longstanding challenges of alienating victims and attaching secondary status to victim contact and their needs in probation (Davies et al,

2007 citing Spalek, 2006 and Crawford and Enterkin, 2001) could be addressed and remedied in theory or practice.

The present study provides a response to the above gap through the lens of the rights of victims as experienced by MAPPA probation officers. Part of that focus in the corresponding theme of the data analysis involves the participants views on and cooperation with the VLU, their familiarity with the Victims Code and ultimately whether these initiatives have on the one hand, assisted them in better understanding and implementing the needs of victims, and on the other, affected their attitudes towards balancing the offender, victim and public interests involved. The thesis therefore incorporates the victim input as a straightforward recognition and response to the realisation that

*“probation officers, traditionally concerned with the rights of the offender, need to be aware of their responsibilities towards meeting the needs and rights of victims.”* (Newton, 2006, p.34)

A notable reminder that human rights duties of probation officers relate to victims as well is again seen in the Rice case, and, more specifically, the Article 2 Right to Life action of the victim’s mother. Following the support of the civil liberties organisation Liberty, the mother of Rice’s victim argued that the HRA requires a full public inquiry into her daughter’s death is held which attracted notable media attention (Kennedy, 2018). In regard to Article 2, this is a limited Convention right whereby the state has a dual duty to prevent its authorities from taking lives and also to protect life, for example through legislation that criminalises murder and manslaughter, and further includes an exhaustive list of

exceptions upon which an interference can be justified when absolutely necessary, such as in self-defence or the course of a lawful arrest (Hoffman and Rowe, 2013). The mother's claim, however, was primarily based on Article 2's implicit obligation on the state to conduct effective official investigation into cases of death as a result of its own or its agents' actions (*McCann v UK* (1996)).

The inquest had initially been denied on the ground that Rice pleaded guilty to the SFO charges, but due to the above potential HRA challenge, the Coroner responsible for the case reversed his decision which "*means that the same act which was blamed in part for freeing Rice will also ensure that the circumstances behind his release are fully examined in public.*" (Dyer, 2006, para. 2) The six-week hearing and inquest that followed lead to the verdict of unlawful killing and highlighted the existence of cumulative systemic failures, such as forensic psychologists assessing Rice not having access to his previous offending, unawareness of his conduct in AP and insufficient officer training, which further confirm "*the case as a landmark in recognising the human rights of victims of crime*" (Stoddard, 2011, para. 23).

This reference to the mother's case is yet another confirmation of the relevance and centrality of human rights considerations in probation not only in regard to offender management or the case of the individual under probation. It quite succinctly confirms that the HRA duties on probation officers and MAPPA more widely extent to victims as well and provides a demonstration as to how the actions of practitioners or the long-standing challenges in offender management the service is yet to address may lead to human rights violations.

Even more interestingly, the case further confirms the insufficiencies and limitation of the MAPPA Guidance 2012 document examined earlier in the thesis in relation to placing an exclusive, short-sighted focus on Article 8. The inquest serves as a prime example of, on the one hand, instances where cumulative failures in offender management may lead to death of victims and, on the other, that potential human rights interferences may go beyond private or family life and even involve the right to life. It thereby becomes imperative that probation recognise not only that, in addition to the victims' needs, the same human rights that relate to offenders apply to victims as well, but also how a rights balance between the two remains a necessary prerequisite for the humanist reorientation of the service.

Commentators indeed assert that according to universal probation standards *"respecting rights and needs of victims of crime belongs to the basic principles of probation work."* (Jelinek, 2015) In that respect, older, persisting attitudes of zero-sum towards rights of victims and offenders appear to present a misinformed and outdated outlook of probation when in fact a 'rights balance' is what becomes apropos: *"that rights of offenders and victims are balanced rather than the one sacrificed to the other"* (Gelsthorpe, 2007, p.499). It has thus been proven foretelling that victim movements could mean a 'cultural shift' for main grade probation staff who are faced with yet another sensitive issue of socio-political dimensions (Nettleton et al, 1997). Victim work, however, necessitates an appreciation on the part of the probation officer of who the victim is, what their needs and characteristics are, how probation work can contribute to the restoration of the victim and the community, and what resources and training

are necessary in the task of understanding and implementing the rights of the victim within the offender management process. It is to these contentious matters that the current review now turns.

b) Victim Identity and Needs: Who is the Victim of Crime?

It is contended that probation practitioners cannot be in a position to assess victim impact without first recognising and understanding their characteristics. These characteristics may be divided into physical and psychological. The former group tends to be more prominent in crimes involving an element of violence, such as sexual and violent assaults in cases of MAPPA offenders, whereas there may always be a degree of psychological impact on the victim irrespective of the type of the offence. This is partly why the psychological group of characteristics remains an ever-relevant consideration in the assessment process. It becomes vain to exhaustively categorise the psychological effects the experience of crime has on the victim because each individual may experience the situation differently. As such, it may be argued that the psychological consequences appear more complex and thus challenging for the probation officer to comprehend and incorporate in their decision-making. Apart from well-known conditions linked to the aftermath of victimisation, such as Post-Traumatic Stress Disorder and depression, commentators in the area also identify other common manifestations of the victims' psychological harm such as

*“shock and fear; disorientation and confusion; oversensitivity and distress; [...] minimization of the experience; isolation and detachment; problems with trust*



*and/or feelings of betrayal; feelings of helplessness, [...] lack of sense of order or justice in the world; and fear of the future.”(Bancovic et al, 2012)*

Moreover, the victim identity has served as yet another element that political discourse utilises in order to justify harsher punitive measures and retributive policies. Beck (2010, p.281) commenting on the issue of victim identity notices how it has been widely

*“used as a platform for avenging interpersonal harms, [...] generates public fear of crime and justifies the subsequent expansion of the CJS. This, in turn, detracts from the state’s ability to solve deeper social problems, as state monies are usurped from needed social services”*

This topical note on the misuse of the victim status by the state also depicts how the victims of crime are treated as a convenient form of commodity in order to justify harsher political agendas in the eyes of the electorate. In an attempt to remedy the situation and respond to victim movements, Probation may have unwittingly contributed towards that commodifying attitude when

*“[i]n adopting a depoliticized, consumerist notion of victimisation so quickly, the Probation Service has homogenised victims, thereby marginalising their social and economic circumstances. With the establishment of a National Probation Service, it is likely that victim work will become standardised in the form of effective practice principles for victims ... a presumption that ‘victims’ and ‘offenders’ are distinct categories is also evident in the stance taken by the probation service towards victimisation. The ability of this rigid approach to cope*

*with situations in which victim and offender may cross over needs to be explored.”* (Spalek, 2006, p.224)

This makes victim work an even more sensitive issue for the Probation Service to handle. On the one hand, the service is in need of more training and resources to adequately accommodate victim work in their assessments and management of the individual. On the other, the practitioners appear to remain torn among the interests of the service, the rights of victims and offenders and the urgency in reorienting the meaning and role of victimisation in offender management. The input of the present study’s participants on the matter thereby becomes invaluable in evaluating the experience of practitioners with decoding victimisation and their attitudes towards those ‘cross-over’ situations of balancing the rights of victims and offenders.

A need that is more commonly recognised and has featured in the Victims Code 2015 and the majority of victim policies, is that of compensation to the victim. However, as far as the harm in question is apparently not merely material, *“compensation is, perhaps more than anything, symbolic”* (Gal, 2011, p.122). While some material harms may be relatively feasible to repair, the nature of certain others is such that they cannot be restored by some kind of monetary compensation. Indeed, it has been shown that some *“[v]ictims valued offenders’ apologies, but were not so interested in financial compensation or direct reparation.”* (Shapland, 2008) That is to say in certain cases the reparation of the material harm may not be possible or significant for the victim, and others where the psychological harm is far greater and, as such, of greater concern to

the practitioners. Gal (2011, p.194) also identifies a range of other victim needs including

*“[h]aving their questions regarding the crime fully answered [...] [o]pportunities for their emotions to be expressed and validated [...] [h]aving a sense of control [...] [e]xperiencing justice as a fair and respectful process [...] and [h]aving access to information about the process and its outcomes”*

An examination of the victim needs and incorporation of these as ‘basic human needs’ in the management of offenders means that the probation officer is in that way in a better position to comprehend the aftermath of the crime committed, the impact it has had on the victim and eventually what to be vigilant of when working on raising harm awareness, ownership and responsibility to the individual. In essence, this implies that offender management is not limited to actuarial risk assessments and protection of the public; it requires an appreciation of the level of harm caused, who has been affected as a result of the offending behaviour, and how therefore the restoration of both the victim and the offender can be achieved.

### c) Harm and Stealing of Conflicts

The development of restorative initiatives has been a result of the attempt to bring the victim back into the centre of the justice process, and the Probation Service has been a noteworthy contributor in the development of such practices in offender management. Certain restorative initiatives in probation, such as Rehabilitation Activity Requirement – which provides greater flexibility and

restorative scope to probation practitioners as to the most suitable avenues to rehabilitation (Offender Rehabilitation Act 2014), group work, victim-offender mediation, conferencing, and community reparation, have been implemented over the years, though, in a rather sporadic manner, and appear in need of objective clarification, support of specialist staff and more widespread resources (Williams and Goodman, 2013, p.533).

Adopting a more restorative approach means that the probation officer appreciates in the first instance the way RJ explains 'crime as harm'. Crime hereby becomes more inclusive in nature and, instead of focusing on its traditional sense of an offence against the state, further adopts the dimension of harm. Walgrave (2004) identifies that "*[c]rime is defined by the harm it causes and not by its transgressions of a legal order.*" (citing Bazemore and Walgrave 1999) This understanding of crime as a situation which gives rise to various forms of harm ranging from material to psychological explains the multidimensional impact it exerts on the victim and, by extension, on the community as a whole. What the practitioners often fail to recognise is how crime disrupts any sense of 'order' and 'autonomy' the individual possesses, and represents "*a violation of the self, a desecration of who [they] are*" which places victims on a conundrum of vulnerability and dehumanisation (Zehr, 1990). Zehr's conception of crime depicts a disease of the world order where the victim has lost through the invasion to their personal space the control over their life, creating a power imbalance between victim and offender. This foundational aspect of crime as harm not only has formulated the foundation of the restorative values and ideas. It also has the potential to help practitioners appreciate the broad impact the offence has on the victim and the community

which the managerialist, crime control-oriented understandings of justice lack the scope and attitude to accommodate. It exemplifies that where violation of self and infection to the sense of order have taken place, the needs to restore the self and heal the harm become more evident and equally important to the preservation of the system's efficiency.

Due to retributive and punitive policies, the focus has been on the offender, punishment and reduction of reoffending which create a network of authorities where the victim rights become a secondary consideration. Christie (1977, p.3) explains this as a stealing of conflicts where the state in criminal proceedings has deprived the parties of their conflict, and more so in the case of the victim who, given the initial victimisation, is now a 'double loser': "*by being denied rights to full participation [...] [t]he victim has lost the case to the state.*" What initially started as a conflict between the stakeholders of the offence has become the property of the authorities and the lawyers who intensify the harm through the notion of 'secondary victimisation'. The continuum of the victim's dehumanisation through further disempowerment and ignorance accentuates the demand for reintegration of the victim in the process. It is those tensions that restorative principles attempt to alleviate by shifting the focus to the actual stakeholders of the offence;

*"It's about getting closure [for victims]. The crime itself is a trauma. Victims say they feel outsiders in the normal process of dealing with the crime. Talking to victims you find they say: 'when I met him he seemed such a pathetic figure', or 'he didn't frighten me any more', or 'I could see how he was being handled and I was satisfied'."* (Bowcott, 2012, p.13)

As the probation service adopts more comprehensive understandings of harm and victimisation, the practitioner may move away from mere bureaucratic attitudes, and towards 'mediating' among victim rights, offender rights and the public (Duff, 2003). Mediation should indeed in its broader sense not appear as a surprising intervention in probation as practitioners have been long engaging with the practice of 'mediating': "*When they supervise court orders, probation staff are at the centre of a mediation process between the state, the court, the victim and the offender.*" (Scott, 2002, p.22) This compliments the 'cultural shift' within probation discussed in the course of this review, and echoes the ongoing demands for reconsideration of its purpose and reestablishment of its social responsibilities towards victims and offenders alike.

What also brings Probation closer to RJ is the previous reference to rights balance and the need to consider offender and victim rights in tandem rather than in isolation. RJ aims at reintroduction of the victim in the equation of justice, but in doing so it treats victims and offenders at an equal footing: "*[a]chieving a rights balance is the goal of restorative justice, and is the goal of rehabilitative programmes*" (Gelsthorpe, 2007, p.500). The Probation Service appears more in need of this reconfirmation of the place of victim rights within its precepts exactly because of its closer practical interaction with the interests of the offender. Understanding their role in meeting the needs of the victims, the probation officer is in a more privileged position to achieve the shift that can establish a rights culture within the service, and thereby alleviate the tensions and imbalances between risk and rights expectations.

The above make it relevant to later hear from the participants of this study whether they have taken part in restorative initiatives, the extent they have found the initiatives helpful in getting to know the victim and the offender, and, ultimately, whether there is a place for RJ in MAPPA in the interests of supporting relationships and the practitioners' understanding and implementation of rights expectations.

## **D. Crime Control or Due Process? That Is Not the Question!**

### **a) Justice lives with Models**

This final section of the review is concerned with the two long established models of the CJP, namely crime control and due process, and how they inform and apply to the practice of probation. The purpose is to identify whether the above tensions and dilemmas are reflected in the way probation practitioners operate within the service. This undertaking is thus based on Garland's assertion that "*the politics of penal modernism are deeply ambivalent. They depend on the ideological orientation of those who staff the institutions, and upon the political and legal context in which they operate*" (Garland, 1995, p.188) and cannot therefore be disregarded in the evaluation of professional attitudes.

The models in question represent an attempt to contextualise certain conflicting justice process values. Findley (2008, p. 139) explains that

*"Packer created his two models not to advocate either one in its pure form but to clarify the value preferences that underlie different systemic choices and to help describe the competing forces that shape our CJS."*

His acknowledgement of the existence of 'competing forces' within the CJS is key in the present context. It remains uncertain whether the values each model advocates are indeed antithetical to one another or solely competing in the arena of criminal justice. As far as the system is shaped by various aims,



ranging from public protection and punishment to rehabilitation, restoration and reintegration, it is only natural that tensions and imbalances may arise. It may well be the case that criminal justice discourse has become accustomed to being expressed in terms of a conflict between the purposes of controlling crime and the rights of offenders (Arenella, 1983; Damaska, 1973). As the preceding sections have shown, the main challenges and tensions found within the practice of probation originate in the struggle of balancing competing interests among risk, public protection and rights. The above observation which essentially describes a 'habit of conflict' seems to have normalised the opposition between crime control and offenders' rights. This means the development of a popular misconception where the two are mutually exclusive and cannot easily coexist. Despite the validity or falsity of the statement, it remains true that services working with individuals need to reach a sensitive balance between seemingly 'competing forces' which may already be condemned as opposites by public opinion.

It is also worth noting before further exploring the models, their broad applicability and element of universality. Although Packer was writing in the early 60s and using the example of the American system, the notions expressed therein were not intended to be limited in space or time. Jones (2010, p.338) commenting on the matter underlines that Packer (1969) intended the two models to help "*us perceive the normative antinomy at the heart of the criminal law*", aiming to "*sketch their animating presuppositions*" and apply the models "*to a selection of representative problems that arise at successive stages of the criminal process*".

Academic opinion has also recognised how the models in question enjoy the potential of applicability in many jurisdictions, and that the experience of ascertaining the model under which a CJS operates is universal (Sung, 2006; Garland, 2001; Damaska, 1973; Packer, 1969). Packer (1964) acknowledges from their outset the universality of the models in terms of certain assumptions made across the board of criminal justice. These include the need for the process to be initiated by the responsible authorities and agencies, limits to the governmental power, and recognising that the offender is an independent entity. Thereby Packer's models can assist in understanding the mechanics of any stage of the criminal process and are non-specific to a single country, jurisdiction or type of legal system. It is the intention here to present the probation service in England and Wales as yet another demonstration of the debate between Crime Control and Due Process, along with its implications for practitioners' attitudes towards the place of human rights in risk management.

Crime Control presents an approach that is almost exclusively based on what the label suggests: controlling the incidence of criminal behaviour. In its original formulation the model proposes that "*the repression of criminal conduct is by far the most important function to be performed by the criminal process.*" (Packer, 1964, p. 9) It believes crime disrupts the social order, transforms citizens into victims and erases the sense of security of person and property. What this implies then is that, the CJS and processes are there to re-establish security and social order at all costs. As a result, the model above has been viewed as an almost authoritarian regime that places emphasis on social control and law enforcement rather than structured dispute resolution (Tate and Haynie, 1993; Shelley, 1994). Sung (2006, p.314) notices that what it essentially suggests is

the supremacy of state power and extensive regulation by the executive authority, all at the expense of the accused. This in turn bears the connotation of establishing a system based on state coercion, limited judicial power and mostly punitive sanctions. In order for these purposes to be accomplished, at the very core of Crime Control are the notions of efficiency and expediency. Efficiency, identified as *“the system's capacity to apprehend, try, convict, and dispose of a high proportion of criminal offenders”*, is a necessary prerequisite in a context of high magnitude of individuals and limited resources (Packer, 1964, p. 10). It follows that such a system is heavily based on administrative fact-finding, quick and informal resolution of cases, and minimal review: in essence, a managerial understanding of justice (Findley 2008; McLaughlin and Muncie 2001). It is fair to notice at this point that some similarities between the above elements and the practice of probation under MAPPA do exist. As discussed in earlier sections, the current offender management system is one markedly based on risk calculations, routinised work and impersonal operational ethic. The de-professionalisation and distance between officer and probationer this situation has caused resembles the administrative conceptualisation of justice that Crime Control advocates. It thereby follows that

*“probation has been both politicised and de-professionalised, first through the shift to ‘corrections’, which created the conditions for the later, rapid ascendancy of ‘protection’. People on probation have become ‘offenders’ from whom society must be protected”* (Treadwell and Mantle, 2007, p. 501)

The review and later case analysis of the thesis have considered how probation officers may impose unnecessarily restrictive measures on probationers.

Following the current discussion, this can be partly attributed to the emphasis placed on efficiency by the practitioners when dealing with an increased workload and limited resources. Moreover, in a multi-agency framework such as MAPPA, expediency and finality adopt an almost divine appearance because cases are managed with minimum resources, increased number of individuals and limited availability of practitioners. In other words, a model that 'allows' the offender management process to transform into a screening one, with routinised operations and minimum opportunities for challenge by the affected individuals, becomes regrettably appealing to a devolved probation service. It is noted though that MAPPA offenders are given the opportunity to make representations through their probation officer which are then read when the panel meets (MAPPA Guidance 2012, p.58 [10.3]). The extent that this opportunity is utilised by the offenders and the actual impact it has on the outcome of the deliberations remains questionable and has not attracted the required attention. It becomes relevant to thereby examine later in the thesis the experience and approach of the interviewees, if any, with seeking representations.

Due Process proposes a rather different action plan to the justice system. This model has been described as presenting some sort of an 'obstacle' to the traditional criminal process (Packer, 1969). It does not agree with informal, administrative processes in the name of efficiency and expediency. It instead recognises that such an attitude does not allow the offender to challenge decisions or afford them the procedural rights and protections they are entitled to. Although Due Process does not condemn the popular demand of repression of crime, it does not prioritise it at the expense of the reliability of adversary

factfinding either. The model does recognise the possibilities of human, factual and legal errors and the associated stigma and consequences these can have on the individual. This also means that state power and its executive branch come under greater scrutiny and need substantial justification for any acts outside their authority or discretion (O'Donnell, 1999). This very "*insulation of the criminal justice operations from political interferences and populist demands*" makes the model a less popular one as it limits in that respect the powers of the state (Sung, 2006, p. 314). Indeed, the defining feature of Due Process lies where it upholds the dignity of the individual whilst asserting a control on official power. It also follows that the model above is characterised by a profound scepticism towards the CJP as a whole. It acknowledges the importance of monitoring measures and balances and "*regards criminal sanctions as highly negative and hence always needing to be kept in check.*" (Jones, 2010, p. 339). That is to say Due Process does not accept the proposition that the offender has surrendered all their rights, and any safeguards or protection of the law by reason of having committed a criminal act. It is worth reiterating at this point that the ECHR 1950 categorises human rights into absolute, limited and qualified, meaning that some cannot be interfered with whatsoever, while others may come with specific exceptions or set of circumstances upon which an interference may be justified respectively. Liberty may be lawfully limited when the individual is sent to prison by a court as a result of the seriousness of the offence committed (ECHR 1950, Article 5(1)(a)), or private life may be lawfully interfered with where that is necessary and proportionate in the interests of prevention of crime (ECHR 1950, Article 8(2)); but in no case is the individual automatically deprived of their rights by reason of their criminal behaviour. Also, it is reminded that, following the HRA,

the person who claims that a public authority has acted in a way that has violated their human rights may bring a claim against the said authority. This is where a humanistic and rights-based approach is found within the due process model's nature which admits the inherent dignity of individuals and the individuals' opportunity to challenge state decisions no matter the former's status.

It is this observation in regard to dignity that brings the model closer to the concerns of probation. This is because when rehabilitation, or even punishment, takes place in the community

*“it suggests a way—both moral and legal—of recognizing the human dignity even of convicted offenders, namely in terms of humans’ rights. Due process thus suggests a template for reducing the number of people punished, and for regulating the conditions under which they are punished.”* (Jones, 2010, p. 342)

The review has considered how the practitioners may be struggling with the matter of offender's rights when balancing these with political and public expectations. It appears that Due Process exercises the kind of scepticism that the probation service may need to adopt for a more rights-based practice and ethic. Risk management plans and license conditions do bear the potential of interfering with human rights and even more so in the multi-agency framework of MAPPA where the focus is on the more serious sexual and violent offenders who are more vulnerable to imposition of over-restrictive conditions. A due process-based probation means a service that is not solely focused on risk and reoffending, but one that also appreciates the practitioners' human rights duties,

focuses on supporting constructive relationships and accommodating the needs of victims and offenders, and ultimately does not sacrifice these values in the name of efficiency and expediency.

However, this is not to say that the crime control principles are completely disregarded or that due process condemns reduction of reoffending and controlling criminal behaviour. Following the shortcomings in offender management and HRA implementation the previous sections have identified, and the fact that probation officers find themselves at the forefront of the balancing exercise between individual and public interests, it may be increasingly challenging to find the golden mean between the two models; this necessitates a closer evaluation of the impact of punitive public expectations on professional attitudes towards a rights balance.

#### b) Penal Populism and the Two Extremes

Public criticisms have given momentum to penal populism, which is not only influenced by crime control ideas, but it may also impact on the attitudes of practitioners towards human rights. Pratt (2007, p.12) explains the 'commonsensical, anti-intellectual nature' of the concept by observing that penal populism

*"speaks to the way in which criminals and prisoners are thought to have been favoured at the expense of crime victims in particular and the law-abiding public in general."*

This definitional approach contains elements of the crime control discourse. It implies the superiority of public protection by translating the respect for the rights of the offender ('favoured') to some form of injustice done to the law-abiding citizen. It is noteworthy that the radicalness of penal populism is such that the reference to rights essentially means the overriding rights of the public to safety and security and the withdrawal of rights from offenders (Pratt, 2008). In such a climate, the experience of probation becomes more and more reactionary and defensive. In an attempt to satisfy the demands of penal populism, the practitioner faced with questions of balancing and risk management priorities may inadvertently ignore the human rights considerations. Probation officers may also tend to overlook questions of offenders' rights because the socio-political response too is aligned to the demands of penal populism. The argument goes political discussion may not be willing to risk public trust and confidence by focusing on and campaigning for the rights of a minority, i.e. the offender's. In Taggart's (2000, p.116) words

*"rights are tools of an embattled minority while populism sees the majority as embattled and blames excessive deference of the state to rights claims of minorities for that injustice".*

It appears then that in an environment of socio-political condemnation of the rights of the probationer, the practitioners are given the 'license' to prioritise crime control and public safety at all costs. Jones et al (2010) also notice how political discourse utilise penal populism in order to appeal to the aspirations of the majority, and create an appearance of care towards public concerns (Pratt 2007). He quotes former Conservative Home Secretary Michael Howard stating



that “*balance in the CJS has been tilted too far in favour of criminals and against protection of the public*” (2010).

It is also remarkable how statements of that nature and associated populist ideas assume that the offender has somehow already been ‘favoured’. Apart from repeatedly referring to seminal, high-profile examples, e.g. the Rice case, the ‘black cab rapist’ and others, they never explain how they have been favoured, in what ways this has been done, or that human rights duties of public authorities is as important a consideration as public protection (Gilling, 2010). This echoes and confirms the observation made above as to how penal populism depends on a commonsensical and anti-intellectual strategy. In order to appeal to public opinion, the statements and manifestos may avoid entering into explanations of what due process or balancing means, or what their implementations requires. A rhetoric that condemns the criminal and presents the majority as the victim, on the other hand, is much more comprehensible and relatable to the public concerns (Zedner, 2002). It is thus fair to contend that strategies of ‘tough on crime’ and ‘zero tolerance’ attitudes which have contributed to the development of a reactionary and almost managerialist probation service in England and Wales, are the bi-product of populist politics.

It may also be asserted that the tensions within the Probation Service as viewed from the perspective of populist punitiveness mirror those found between Crime Control and Due Process. Tyler and Boeckmann’s (1997, p.258) work has early identified that the proliferation of penal populism has normalised the “*willingness to abandon procedural protections*” in the name of risk and dangerousness control. This means that those rights ensuring protection of the

individual and limiting abuses of power receive public condemnation at the point of enforcement. Commenting on the issue, the same study considers that “*this influence flows from the general public evaluation of legal procedures as suspect and procedurally unfair*” (Tyler and Boeckmann, 1997, p.259). This not only implies a contradiction in public opinion describing unfair a model that is actually based on principles of due process. The above misconception also aspires to a punitive system which again distinguishes between the ‘deserving and undeserving’ of legal protections individuals, and is set against proportionality and human rights (Jones, 2010; Hughes and Edwards, 2002). This becomes important for the thesis’ purposes because the prospect of public condemnation of rights-based probation strategies as ‘unfair’ can only mean proliferation of defensive and reactionary attitudes on the part of the practitioners. Again, in such a climate, the shift away from a culture of control and towards a rights culture becomes increasingly necessary.

Further inquiry into the substance and antithesis of Crime Control and Due Process has revealed that they can even be described as conservative and liberal, respectively (Liebling, 2005; Braithwaite, 2003; Hall, 1983). Although some connections from that perspective have been made above, suffice it here to say that attaching the label of conservative to a model more concerned with security, or describing another as liberal because it respects human rights and dignity misses the point for which the models were introduced in the first place. This observation is yet another instant that confirms the popular polarity between the two models. It confirms the intense socio-political element behind established criminal justice policies and processes, and reminds of the challenges in achieving a balance between two extremes. The probation issue

as currently studied is, if anything, a prime example of how a CJS must acknowledge that the two models are two ends of a spectrum. That is to say the question is not about choosing one model over the other. But rather accepting both their credibility and incompatibility to one another, and that to achieve a balance may mean an exercise of moderation and compromise between the interests they represent, that may only be achieved by balancing the elements of both models.

The consideration of the two models at this stage of the thesis thereby conceptualises how the tension among risk, public protection and rights can be ameliorated by contemplating a balance between crime control and due process. The same balance though may be skewed by governmental claims in regard to the extent of Probation's adherence to human rights which may appear more compliant than the reality would suggest. It thereby becomes relevant to consider these official claims, either from HMPPS or MoJ and associated authorities. There has been relatively limited official attention to the matter with most of this narrowly focusing on questions of privacy. An example is seen in the NOMS (2016) policy statement which solely states at the end of the document that

*"The Human Rights Act 1998 gives effect to the rights and freedoms enshrined in the European Conventions on Human Rights. Under Article 8 of the Convention on Human Rights, individuals have a right to respect for their private lives. This is not an absolute right and can be overridden if necessary and in accordance with the law. Interference must be justified and be for a particular*

*purpose. Justification could be protection of health, prevent of crime, and the protection of the rights and freedoms of others.”*

This displays a very limited overview of the applicable human rights duties and creates the misperception that these only relate to Article 8 when in fact the restrictions and conditions imposed by the NPS have the potential to interfere with other or in essence any Convention right (Durnescu, 2011). This trend of associating human rights in probation exclusively to Article 8 was seen earlier in the MAPPA Guidance 2012 too. This further reinstates the importance of a MAPPA interview sample in the present study since the framework presents the greater sphere of risk and hence potential human rights violations due to the restrictions placed on individuals.

A more objective instance of a government response on the matter is the Home Office and Constitutional Affairs (DCA) reviews on deportation and hijacking cases (DCA, 2007). Although these topics are outside the remit of this thesis, the reviews do mention the Rice case and Probation and the impact of the HRA. The relevant point raised in the response is in the first instance that cases such as Rice’s demonstrate the public and professional misunderstandings in the implementation of the HRA and its scapegoating in covering wider administrative failures on the part of the authorities, and it does acknowledge that the HRA does not limit the capability of the authorities to protect public safety. It further recognises the

*“the extent to which the Government itself was responsible for creating the public impression that ... it was either the Human Rights Act itself or*

*misinterpretations of that Act by officials which caused the problems ... public misunderstandings of the effect of the Act will continue so long as very senior ministers fail to retract unfortunate comments already made and continue to make unfounded assertions about the Act and to use it as a scapegoat for administrative failings in their departments” (DCA, 2007, p.6)*

It thereby remains pivotal for HMPPS, MoJ, and associated agencies to highlight HRA as a central shared responsibility of MAPPA as it presents the greater potential in interfering with human rights of individuals, and address the administrative failures linked to risk assessments, resources and communication that interfere with its implementation. The DCA review above also acknowledges the need to improve human rights training for public officials, that public safety is not prejudiced because offenders’ rights are prioritised, and the importance of working towards a human rights culture. Nevertheless, these observations appear to adopt a tone of rhetoric in the review rather than proceeding to formulate strategic achievable changes.

This limitation continues where victim rights are concerned in the MoJ and NOMS’s (2015, p. 42) Practice Framework on offender management where the only reference to human rights invites probation and victim units to ensure that

*“victim issues are fully considered and taken account of as far as possible within the constraints of data protection and human rights legislation ... but must accept that it is not always possible for every request made by the victim to be agreed because of the need to rehabilitate the offender and to comply with human rights legislation.”*

It is argued that the above approach may revive the misinterpretations experienced in earlier reports where human rights compliance is presented as an obstacle to the interests of the victim. This again leans on the side of scapegoating rather than balancing when in fact the HRA remains the sole mechanism that can ensure a balance between the interests of victims and offenders. The approach seen here and earlier ones examined above that remain on the side of rhetoric and lip-service make it all the more crucial to examine the present state of these tensions in MAPPA in the aftermath of such government responses and policies.

A final reference is made here in terms of training implications following the consequences of penal populism and crime control. Penalty and populist demands have had an impact on the attitudes of probation officers and trainees towards training and relevant education too. This has resulted in what has been described as a 'culture of utility' among the circles of the NPS (Millar and Burke, 2012; Garland, 1997). Millar and Burke (2012, p.321) explain that the anxiety about the tensions identified above along with ongoing punitive tendencies have generated

*“[a] growing emphasis on individual responsibility [that] has been oriented towards the attribution of blame rather than the perception of need [...] in ways that add momentum to punitive policy formation.”*

They notice further that such an instrumental understanding of responsibility has cultivated an approach towards training where “[t]hinking and action is

*valued for its use in furthering specific ends.*” This rather compliments earlier observations in regard to managerial and administrative approaches to justice and shows that the disengagement of officers with offenders may start even from the early stages of training that preserve the deep-rooted penal populist attitudes. Treadwell (2006, p.3) indeed notices that the emphasis on the then vocational element of the training of new probation officers at the expense of the academic represented an attempt to move away from a social and into a more punishment-orientated probation;

*“The motivation was more base, as the government desired to retain its successful electoral slogan of being both tough on crime and its causes, and to reassure the electorate that it would shed any association between community sanctions and leniency.”*

These signs of an overall ‘tightening-up of probation’ that start as early as at training, reveal an attitude of pragmatism within the service that becomes counterproductive when attempting to balance offenders’ rights and risk. The climate of penal populism has made practitioners and trainees more concerned with ways of discharging responsibility rather than the *“more philosophical questions such as: ‘What are good probation relationships with offenders?’, or ‘Why is rehabilitation valuable?’*” (Millar and Burke, 2012, p. 321; Raynor and Robinson, 2009) They are thus more interested in facts and what they need to do as professionals, rather than engaging with disputable criminal justice matters and considerations of human rights and proportionality.

However, such an approach is almost inconceivable in an environment that involves discretion, own judgments and decisions about people's lives.

Relevant studies have shown that probation training and work require some form of personal development on the part of the practitioner in terms of information and interpersonal skills (McNeill, 2006; Dowden and Andrews, 2004). Others have also noticed a correlation between the use of such skills by probation officers and reduced reoffending (Priestley and Vanstone, 2006; Rex, 1999). Working towards a humanist, rights-based probation means

*“accepting and asserting that, even although individuals have acted illegally, they should still be met with the respect – and the respectful treatment – which is their right as human beings, independently of any impact that this humane treatment could have on the risk of their reoffending.”* (Millar and Burke, 2012, p. 324)

Although this constitutes a fair understanding of a rights culture, it would still be faced with disapproval by public punitive expectations. As with the political inclinations of justice models above, this is yet another instance confirming that the risk management process is not a 'zero-sum game', but one that requires individuals trained to handle debate and discretion (Tonry, 2004) in a way that respects the interests of victims, offenders and the public equally. What thereby appears to provide a balance between the two models is the notion of human rights itself (Gelsthorpe, 2007, p.505 citing Ashworth 1995). This reinstates the rights culture idea in probation which in view of the evaluation of the two models develops a focus on observance of victim rights and public safety whilst respecting the offenders' rights or, where applicable, interfering with them to the



extent that is necessary and proportionate to the aims of the interference and the problem it addresses: this projects a probation service more capable “*to develop a criminal justice ethic in which crime control goals are pursued within due process restraints*” (Gelsthorpe, 2007, p.505) and thereby replace alienation, notions of ‘deserving and undeserving’, unawareness of victim impact and anxieties of risk aversion with adherence to HRA and a rights balance.

## **Chapter Conclusion**

The review of the relevant literature and seminal pieces where among others Scott (2002) advocates the potential impact of human rights law on probation, Whitty (2007) identifies the 'cumulative failures' of the service as experienced in the Rice case and then Gelsthorpe (2007) introduces the need for a rights culture and balance, has accomplished to provide a representation of the contextual factors that may create imbalances and misplaced attitudes towards human rights. The originality and contribution of this review rests where it has not solely aimed at presenting the applicable legal framework, the omissions of the existing limited literature in the area or the historical developments in risk management. It has in essence managed to establish that in approaching questions of human rights in probation the focus turns on the one hand, to the wider socio-political arena within which the demands and expectations of crime control and due process meet, and, on the other, the impact of the ever-persisting challenges seen in probation practice and culture. The HRA indeed created new duties for probation officers in respecting human rights which, nevertheless, do not appear to have been adequately examined by the academic or policy-making communities. The review argues and subsequently informs the development of the thesis in that a managerialist, risk-averse, resource-deficient and desk-bound approach alienates both the individual and the practitioner from the service and does not allow for the fostering of those relationships which can bring the latter closer to the rights of the former. These issues appear increasingly represented in the structure and policies of MAPPA which works with individuals that are mostly vulnerable to be subject to disproportionately strict conditions and thus potential human rights violations.

### **3. METHODS AND METHODOLOGY**

#### **Chapter Introduction**

This chapter examines the methods employed and the methodology followed in answering the research questions of the thesis. The approach is exclusively qualitative with a socio-legal element in the combination of the methods used, namely interviews, content analysis and documentary analysis of case law. The first part focuses on how the documentary analysis has been applied to case law reports and explains its centrality in understanding the facts whereby human rights violations in probation may arise as well as the complementary role of this method in the development of the interview schedule. The chapter then presents why semi-structured interviews are suitable to this project based on interpretivism and a contextual epistemological tradition. An examination, overview and table in regard to the sampling method and subsequent participant recruitment process followed is provided. The discussion then turns to content analysis which aims to present both the theoretical underpinnings of the thematically directed qualitative version employed. Finally, a timeline of the practical steps taken in the research process from selection of cases and documentary analysis to access, recruitment, transcribing and stages of content analysis is discussed. Alongside this, consideration is given to questions of reflexivity relating to who the researcher is to the participants whereby realisations of 'outsider' and catharsis are drawn respectively. The above combination of case law and interviews is pivotal to the research questions of this project and confirms the originality in the methodological approach adopted in attaining the context and fuller picture of the attitudes in question.

## **a) Documentary Analysis of Case Law**

### **i. Purpose and Outline**

The documentary analysis of case law reports examines concluded cases brought by individuals who have been under probation supervision against the National Probation Service, or associated agencies, on the grounds of human rights interferences. Thus, in that respect, the review initially aims to identify how the human rights duties emanating from the HRA have been constructed, interpreted, and expressed by the judiciary. It is noted though that exploring judicial opinion or attitudes per se is not the purpose of the analysis. It is argued that, since the documentary analysis of case law is done prior to the interviews, it becomes the main purpose of the former to observe whether the participants are aware of these cases, and, if so, how did they become aware of them, and ultimately, in the instances where they do make reference to them in their answers, whether the judicial interpretation of the above duties and expectations is in line with their own professional attitudes and practice. By following judicial decisions where the offenders' rights to private and family life, liberty, and others were at stake, it can be ascertained what the actual legal background entails in regard to the application of the human rights duties in question, especially in cases of qualified rights where the exceptions invite most of the balancing exercise. Scott (2002, p. 9) agrees in that

*"[i]t is in balancing the basic human rights with these exceptions that the exercise of discretion by practitioners and the decisions of public authorities will be tested in the courts"*

Following the above purposes, it is noted though that the role of this method, although crucial, is primarily complementary to the content analysis of the interviews which constitutes the method to which the thesis culminates. The intention here is not to engage in any comparative exercise between the methods. The case law analysis aims to present the reality of s.7 of the HRA which allows human rights cases to be heard in domestic courts, explore whether any issues identified in the literature are reflected or answered in the judgments, and eventually reveal how, if at all, the courts' interpretation of the human rights duties may assist practitioners' understanding of their legal expectations.

ii. Elements of the Method

- Period

The period from which the cases used in the analysis were selected is from 2003 onwards. The choice of time frame is based initially on the fact that MAPPA was introduced in 2001 by the Criminal Justice and Court Services Act 2000, and later revisited by the Criminal Justice Act 2003. It is also noted that the above time period follows the introduction of the HRA 1998 which is central to the subject matter of the thesis.

- Courts and Parties

For purposes of clarity and reliability of results, the review will only focus on concluded rather than ongoing cases. In terms of defendants, the analysis attempts to focus as much as possible to cases brought against the West Midlands branch and involve MAPPA so that there can be direct relevance to the thesis focus. However, this is not to say that cases where the defendant is a

different branch of the NPS or the Secretary of State, will not be consulted if the claim appears informative to the research questions; this restrictive approach and pool to draw cases from would rather limit the number of potentially relevant cases to a counterproductive extent.

- Online legal databases

The primary search tool employed in the current documentary analysis is Westlaw. Where necessary for the purposes of cross reference of results, Lexis Nexis may also be consulted. Both legal databases, provide detailed information on and access to case law, journals, and legislative instruments. Access to the websites above is automatically gained through the researcher's university IT account details. Another useful feature of Westlaw is the inclusion of status icons instantly showing the current state of the cases.

It is also crucial here that both Westlaw and Lexis provide options that refine the initial search results. As such the initial suggestion for refining the results is to exclude all cases from Scotland and Northern Ireland, limit the time frame to post-2000, and include 'human rights' in the search terms/keywords.

As far as limitations are concerned, again, ongoing cases would have to be excluded no matter how directly relevant the facts appear to the context of the thesis. Lastly, the issue of missing or pending data is also addressed by employing a second legal database as explained above which ensures crosschecking and that no items of interest are missed.

- Number

The aim is to include a number of cases that is able to provide an overview of the type of cases in this area that normally reach the courts and also, provide different set of circumstances so that there are different demonstrations of the application of the law to the facts. Also, it is reminded that this is a developing area and one that is not highly litigated as it is up to the individual offender to seek legal advice and initiate proceedings. Added to this, due to the criteria set in terms of period, location, MAPPA-related and so on the number of eligible cases becomes quite limited. In contemplation of the above, four cases are examined in the present study.

iii. Why Documentary Analysis and Case Reports as Documents

The plethora of documents as sources of information has created many possibilities for qualitative inquiry because they

*“have the potential to inform and structure the decisions which people make on a daily and longer-term basis; they also constitute particular readings of social events.”* (May, 2001, p.176)

The potential to inform and structure decisions is particularly applicable to the nature of the current case law data. Given their legal authority and precedent, case reports constitute a documentary source to which many authorities within criminal justice and elsewhere appeal as basis of their decision-making processes. It is reminded that the English legal system is a common law system and, as such, based on judicial precedent. This means that when judges decide cases, the ratio decidendi, i.e. the legal principle upon which a case has been decided, of previous cases of similar mix of facts and law must be followed as

binding precedent. Although this is a very simplified overview of the doctrine of precedent as it further depends on the hierarchy in the court system and whether any exceptions apply to a particular case, it reiterates the importance and impact of judicial decisions and, by extension, the potential usefulness and reliability of these case transcripts. Even more so in the present context, case reports can be considered as a source which can inform current and prospective probation officers of their duties and legal expectations in relation to human rights.

This reconfirms how relevant is to consider in conducting the interviews whether the participants are aware of the relevant cases or, indeed, whether they received any relevant training outlining and explaining implications that a new human rights case may have for their practice; or even more controversially, whether they have ever had to change or adjust an aspect of a management plan in order to comply with court decisions. Given the immediate legal validity of decided cases, the practitioners may need to restructure management plans to meet the rationale of the court or, justify certain of their decisions and license conditions especially if constituted of allegedly extreme measures (Scott, 2002). Eventually, a part of their attitudes towards certain concepts, whether that be public protection or offender and victim rights, is or may necessarily have to follow the direction that judges provide through their interpretation and application of the HRA in the context of offender management.

#### iv. Categories and Interpretation

Documentary analysis further categorises documents into groups according to who has produced them, how they are accessed, and the use for which they



were intended (Calvert, 1991; Forster, 1994; Lee, 2000). The relevant categories are a) primary, secondary or tertiary, b) public or private, and c) solicited or unsolicited (May, 2001). In terms of the first classification, they do normally contain the actual words of the judges themselves having witnessed the events of the trial, which would make the transcript a primary document. Primary documents can be considered as a more accurate representation of the reality they describe due to the author's proximity in time and space to the event (Russell, 2012; May, 2001, p.180). This is to say that the way judges state the facts of the case and then their own decision, may naturally be considered more accurate, detailed, and direct than a summary written by an independent author.

In terms of accessibility, public and private documents are normally further divided into the subcategories of closed, restricted, open archival and open-published (Scott, 1990). Despite the fact that accessibility is not a consideration here, suffice it to say that the different distinctions above do not in any way obstruct the use or analysis of the reports. Where the purpose of the case reports is contested, the said databases themselves categorise their domain as 'online legal research' which would rather exclude the classification of official case reports as unsolicited documents (Burgess, 1990).

It is also of interest how documents present a reflection of the reality, or alternatively a medium of correspondence between a description and the actual event (May, 2001). The thesis is indeed in search of a contested reality of attitudes in the Probation Service, and the impact of the expectations placed upon its practitioners on legal, social and even political levels. The idea of

unravelling a 'reflection of the reality' through documentary analysis is thus fitting to present purposes and research aims. In the act of constructing a socio-legal reality, therefore, it becomes crucial how the document develops or, as in this instance, what the court include in or exclude from their decision. This has been described as exercising 'suspicion' when analysing a document of such nature, and thereby trying to uncover hidden meanings, attitudes or political influences (May, 2011; Easthope and McGowan, 1992). In the case law arena, this can be translated as searching for defensible or policy decisions, i.e. opinions structured in ways that would defeat a 'floodgates' situation and thus appear favourable, if not paternalistic, towards the defendant public authority.

Their power to construct meaning remains dependent on how the document is approached. Giddens (1984) has identified three levels of interpretation, namely intended, received and content. As the names suggest, these are more concerned with the meaning the author intended, the meaning as received by the audience and the more covert ones as expressed by semioticians, respectively. A more inclusive approach allows to consider the main author of a case transcript to be the judge(s) or collectively the court who have reached the relevant decision; the same approach may also accept that the intended audience may be academia, legal practice, public authorities or groups of the population interested in legal research. What these categories are more interestingly relevant to is the discussion of reflexivity within qualitative research. As with any other document, not every researcher would conduct the same level of analysis of the selected set of cases. As far as the current methodology follows a rather directed approach based on ideas and concepts explored in previous chapters, the way certain meanings are 'received' is to a

certain extent guided by the perspectives the researcher has employed to make sense of the balancing reality in question.

A note is also made as to the rest of the documentary research's pillars of authenticity and credibility (Calvert, 1991). What this means is following certain guidelines of assessment of authenticity which include whether the document contains errors or inconsistencies, different versions of the same exist, has been tampered with or corrupted and so on (Forster, 1994). It can be safely said that owing to the reliability of the legal databases from which the case reports are retrieved, the issues above do not in any way interfere with the authenticity of the case transcripts.

Credibility bears some links to authenticity but more specifically "*refers to the extent to which the evidence is undistorted and sincere, free from error and evasion*" (Scott, 1990, p.7). This is rather linked to the people who have handled the relevant text and information, whether their observations can be considered accurate, or, whether there are suspicions of political interferences and sympathies. As stated earlier, the analysis of the case reports stays close to the actual text of the court judgment itself rather than relying on summaries of independent assessors.

What finally becomes relevant to acknowledge is that following the definitions above, the analysis becomes more qualitative by focusing on what is relevant according to the project's themes, how the text creates tendencies, attitudes and opinions, and how the processes of 'deconstruction – interpretation – reconstruction' develop new meanings (Ericson et al, 1991, p.55). This implies

that the attention is not placed on the frequency of certain words, categorisation of phrases or any other sort of quantification. The focus remains on how the court decisions as expressed in the case reports make sense of the totality of the legal expectations on probation officers, and how this, subsequently, if at all, affects the practice and attitudes of the latter towards balancing rights.

## **b) Semi-Structured Interviews**

### **i. What, Why and How**

Qualitative interviews provide an avenue to immediate collection of data through the verbal interaction between the interviewer and the interviewee. Interviews have the benefit of direct contact which can contribute to the development of conversation and elaboration of the information given. Hopf (2005, p.203) refers to 'expert knowledge' and 'subjective perspective' as key elements of the method. As far as the current research area is focused on the probation practitioner, interviewing presents an opportunity to extract information from the source most associated with the subject matter. Marshall and Rossman (2006) commenting on these connections between the attributes of the research and the choice of methods implemented, formulate the term 'epistemological integrity'. How probation officers balance human rights and public protection, how they ensure compliance with the relevant legislation, what their understandings of human rights are, or whether they feel they are sufficiently trained for the task are all questions of degree and individual analysis. What this means is that the nature of the questions asked here is such that the answers sought can be known through some sort of conversational interaction. Knowledge in the project's field can be produced by individual reports of those working within the framework under examination.

Since the attention remains on the individual understandings of the participants and their attitudes, issues of subjectivity become relevant to consider. The commonly referred issues in terms of subjectivity of interview data is that of diverse opinion and expression of a subjective version of the reality examined

by the researcher. This can be seen as a potential threat to the reliability and integrity of the research design because the results and eventual analysis of the data cannot be verified but have to be taken 'on trust'. Arksey and Knight (1999) commenting on the above observation, explain that subjectivity in qualitative research may have to be defended by way of proving that the research remains a systematic enquiry, nevertheless. Subjectivity does not always mean a misrepresentation of the world. The collection of different perceptions on a given matter may indeed create a more representative picture of the reality.

That is also partly why the current research adopts a rather interpretivist approach. The review of the literature has revealed the many debates present within the practice of probation and the conflicting considerations that need to be taken into account when a balance between crime control and due process is sought. This explains how the current enquiry is inherently idiographic because it describes an aspect of the social world by reference to a specific setting (MAPPA), processes (risk assessment) and relationships (probation officer – offender). Interviewing indeed fits here because *actually conversing with people enables them to share their experiences and understandings.*" (King and Horrocks, 2010, p.11). How probation officers make sense of human rights, or what it means to them to protect the public, accommodate victim participation, and, at the same time, remain compliant with other legal expectations may be subject to particular vantage points and interpretations despite the prescribed HRA framework in place.

ii. Deconstructing the Semi-Structured Interview

This study employs a semi-structured type of interview and argues that such a structure better serves its aims and purposes than the structured or unstructured types would. In the case of the structure chosen,

*“the interviewer does have a specific agenda to follow and will have selected beforehand the relevant topic areas and themes to pursue.”* (Arksey and Knight, 1999, p.7)

The approach is less formal, and the schedule is expected to contain key questions to probe a conversation-like interaction. Adopting a flexible structure gives the interviewee the opportunity to refer to an aspect of the context under consideration that the interviewer may have not anticipated but has actually proven relevant. It is no news to qualitative interviewing that researchers often find themselves recognising *“that an aspect of participants’ lives [they] had overlooked initially may be important to the phenomenon”* (King and Harrocks, 2010, p.38) and would not have been brought up had the interview been structured. It is rather unrealistic for the researcher to be in a position of anticipating every possible eventuation or life experience the informant might refer to.

Also, the chosen structure better caters for the multidimensional set of responsibilities and experiences encountered by practitioners within MAPPA. The managerialist system in place, the trend towards de-professionalisation of the service, the challenging risk assessment tools in use and the lack of practitioner – offender communication represent the main challenges to the balance between public protection and human rights. This means individual

probation officers may exhibit different experiences with the framework to one another, and as such, different understandings that cannot be approached by a generalised interview guide.

What is also of the essence for present purposes is employing the types of questions that would preserve the semi-structured character and enable the practitioner to engage with the issues the interview investigates. Patton's (1990) formulation is hereby followed which sees six types of questions normally applied in qualitative interviewing.

The first question area relates to background or demographic questions, such as the participants' age, ethnicity, gender, years in service and so on. Despite how these may initially seem basic and straightforward, they remain important when later analysing the data and identifying underlying trends. Second comes the experience and behaviour questions which aim at understanding the everyday workings of the participant within their context under examination. The third cluster includes mainly opinion and values questions and, as the name suggests, they are concerned with what the interviewee thinks, believes or values about the field the study examines, as well as what meanings and perceptions they attach to it. The fourth set contains what has been described as feeling questions and relate to the participant's emotional experience. These are considered useful in our scenario especially in those instances where the practitioner wishes to refer to specific encounters or meetings with offenders, and how their emotional response affected, or not, their subsequent assessment. The fifth category is made up of knowledge questions and it links to the distinction made by Schutz above in relation to what we consider to be a



fact. Following the interpretivist rationale, the focus remains on what the particular practitioner being interviewed believes to be a fact based on experience, training and information held. The final group explores sensory questions. These may appear in the form of follow-up questions in order to clarify what the interviewee had actually thought or experienced that affected the opinion or understanding expressed. It is noted that although this format is consulted in the current interview schedule, it does not mean that the questionnaire is neatly and exclusively structured around these six distinct categories of questions as the present 'categorisation' remains linked to the main themes explored in the literature review.

### iii. Epistemology

In revealing the assumptions that underpin the current methodological approach, Willig's (2001, p.12) direction is followed. It suggests that in doing so, three questions need to be answered, namely the assumptions the methodology makes about the world, the kind of knowledge it aims to produce, and how the role of the researcher is conceptualised accordingly. The current study follows a primarily contextual epistemological tradition due to the context's close relevance to the subject matter, as opposed to realist or constructionist. It is not the purpose here to explore all three and examine the merits of each, but rather support how the contextual better 'agrees' with the objectives of the project. The way contextualism understands the world is situation-dependent, i.e.

*"set in a particular time, consisting of a myriad of factors, relations and activities and is in a state of incessant change. From this position 'facts' cannot be*

*commensurate with, or reducible to, a decontextualized view of human nature."*

(King and Horrocks 2010, p.19)

The above explanation is in line with the project's theoretical framework because it would be rather regrettable to approach a criminal justice issue or agency without regard to the political, social and criminological context in which it operates. Feyerabend (2010) confirms that phenomena and attitudes cannot be fully explained without having regard to the wider context of the subject under examination. The current project indeed advocates that understanding how the probation officer approaches, understands and experience their expectations cannot be divorced from the intra- and extra-organisational context.

The knowledge produced here by way of semi-structured interviews can only be understood and analysed by firstly acknowledging the 'situated perspectives' of the participants. Therefore, that knowledge produced is multidimensional because it includes the interviewees perspectives, the researcher's interpretations, the cultural and social mechanics that affect the understandings of both parties, and lastly, how such interpretations and perspectives are judged by the wider academic community (Pidgeon and Henwood, 1997). Moreover, the role of the researcher, and the way contextualism understands it, raises questions of subjectivity. It is contented that the researcher's influence on the project is not hereby considered inhibitory to its aims or in any way compromising its integrity. The argument goes, a project that follows a critical approach to the issues it explores, it indirectly and subsequently communicates the researcher's point of view too (King and Horrocks, 2010, p.21). Having a

point of view or a lens through which the researcher observes and analyses the data is not to be misconceived as 'bias'. On the contrary, a reflective approach is rather necessary in the present study where the contentious concepts of public protection, offender and victim rights, and balancing attitudes are examined.

### **c) Interview Sampling Method**

#### **i. Qualitative Sampling and the Impossibility of Randomness**

The present project remains qualitative in character and part of this means that any statistical representation or quantification of the phenomenon do not serve or complement its purposes. Qualitative studies like the present, explore a phenomenon, its contextual underpinnings, and use representative sampling in view of achieving potential generalisability, typicality and transferability of ideas. (Flick et al, 2005; Merkens, 1997; Hartley, 1994).

Wilmot (2002, p.2) advises that there are certain questions researchers can pose to themselves in ascertaining and formulating sampling strategies, such as

*“What are the research objectives? What is the target population? Who should be excluded from the sample? Who should be included in the sample? ... What sampling technique(s) should be employed? How are the data to be analysed?...”*

This, however, is not to say that they provide an exhaustive checklist or that each question is equally relevant to every possible qualitative study. The list is rather treated as a guidance that on the first instance reminds that sampling must at all times remain closely associated and dependent on the research objectives.

The present technique moves towards a non-probability sampling as the scope of the thesis is not concerned with representing the whole population of

probation officers in England and Wales. Although strict generalisability of the results is not sought, sampling is hereby discussed as yet another means to further develop the analysis through the lens of the probation practitioner. This foundational acknowledgment agrees with non-probability sampling because

*“we don’t know with nonprobability samples whether a sample represents a larger population or not. But that’s OK, because representing the population is not the goal with nonprobability samples. That said, the fact that nonprobability samples do not represent a larger population does not mean that they are drawn arbitrarily or without any specific purpose in mind ... These projects are usually qualitative in nature, where the researcher’s goal is in-depth, idiographic understanding”* (Blackstone, 2017, p.1)

It is highlighted that non-probability is not to be translated to informality, arbitrariness or in any way support the observation identified earlier that not enough attention has been given by authors to qualitative sampling. There are still certain guidelines and techniques by which the non-probability sampling is manifested within qualitative research designs.

## ii. Techniques and Size

Various techniques have been identified by authors in the area according to the focus and aims of individual studies, ranging from maximal variation to convenience (Marshall and Rossman, 2006). The sampling technique refers to the way and ideas by which the sample is selected, which links to how qualitative research is based on a form of purposive or purposeful sample. This means that *“a researcher begins with specific perspectives in mind that he or*

*she wishes to examine and then seeks out research participants who cover that full range of perspectives"* (Blackstone, 2017, p.7). This type of approach is followed here as it presents the potential to include a broad range of participants' attitudes and perspectives. In the present case, a relevant characteristic is the time the practitioner has been employed in the Probation Service or, their held position within the service. For example, if most of the participants are newly employed, it would be doubtful whether that could be considered as suitable sample to provide a perspective of the depth required by the research questions.

Another topical consideration is what their academic background is. Law graduates, individuals who have had some form of legal training or modules in their degrees, may better understand certain initiatives upon which the practice is supposed to operate, or indeed their human rights duties. If thereby the sample include participants from such academic backgrounds or is such that only one academic background is represented throughout the sample, it would be necessary to ascertain whether their attitudes have been affected by pre-existing knowledge of the topic.

Before further elaborating on the characteristics of the purposive sample, it is important to note that it is not uncommon for qualitative studies to implement more than one sampling techniques (Seale, 2004). This is the case in the present project too where it is contented that the nature and context of the project are such that a combination of purposive and convenience sampling presents the most suitable approach. The convenience sample type normally refers to the instances where the researcher recruits the participants of the

target population to which they can most conveniently gain access (Gomm, 2005). The choice of this sampling type is closely related to the nature of the probation work and the access consideration usually present when conducting research within public authorities. This means that the sampling strategy employed has to take into account that even though access is granted, the participants may not be available at the interviewer's convenience due to their own daily responsibilities. It is argued that a purposive sampling alone would place a restriction on who can 'qualify' as a possible participant to the extent that not enough participants are available at the time the interviews need to be conducted.

The approach above also directly affects the size of the sample. As far as statistical significance is not sought, it is assumed that the sample does not need to be particularly large, unlike the case with most quantitative research which may recruit hundreds or thousands of participants. Wilmot (2009, p.4) makes an interesting observation in relation to the small sample size in most qualitative studies by explaining that

*“because qualitative investigation aims for depth as well as breadth, the analysis of large numbers of in-depth interviews would simply be unmanageable because of a researcher's ability to effectively analyse large quantities of qualitative data.”*

Although a large sample size can potentially provide more reliable and representative of the population results, it can operate inhibitory in relation to

the depth of analysis. In view of the above, a maximum of fifteen probation officers has been considered as an appropriate and workable sample size.

iii. Overview of Interview sample

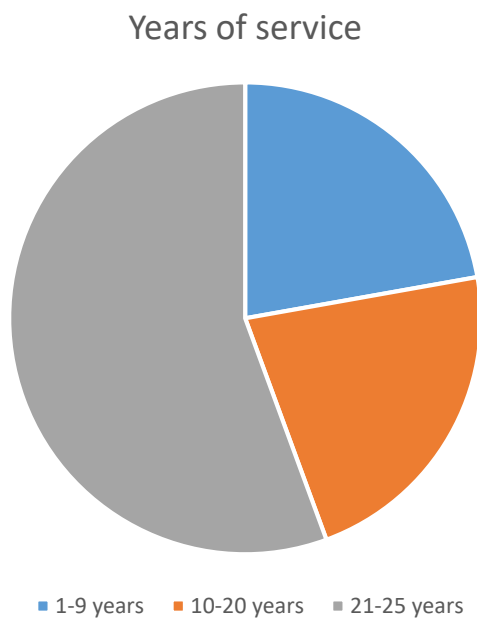
Nine active MAPPA probation officers were interviewed who are based at various offices in the West Midlands division. The sample in question is considered diverse with probation officers at different stages in their career and representing more than one academic background and experience group as shown in the table and percentage illustrations in the next pages.



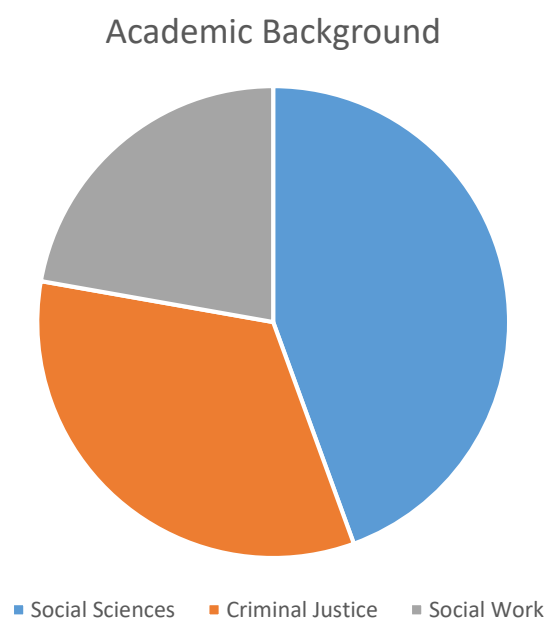
**Figure 1:** Interview sample

<b>PO</b> <i>Characteristic</i>	<b>Clio</b>	<b>Euterpe</b>	<b>Thalia</b>	<b>Melpomene</b>	<b>Terpsichore</b>	<b>Erato</b>	<b>Polyhymnia</b>	<b>Urania</b>	<b>Calliope</b>
<i>Years of service</i>	17	25	25	21	22	25	2	16	3
<i>Academic background</i>	Social Sciences	Criminal Justice	Social Work	Social Work	Social sciences	Social Sciences	Criminal Justice	Social Sciences	Criminal Justice
<i>Types of offences supervised</i>	Various	Various but mainly sexual	Various	Various	Various	Various	Various but many terrorist	Various	Various
<i>Length of interview</i>	1hr24mins	1hr34mins	1hr22mins	1hr25mins	1hr10mins	2hrs47mins	1hrs28mins	1hr15mins	1hr09mins

**Figure 2:**



**Figure 3:**



#### **d) Qualitative Content Analysis of Interview Data: A Hybrid?**

##### **i. Analysing the Content of Content Analysis**

The method has been ascribed various definitions which nevertheless do not differ greatly when it comes to the essence of what content analysis actually does. It has been expressed as “*a set of methods for systematically coding and analysing qualitative data and for testing hypotheses about texts*” (Russell, 2012, p.536), or “*a bundle of techniques for systematic text analysis*” (Mayring, 2000: 1). Hsieh and Shannon (2005, p.1277) in their historical examination of the method though, recognise the definitional challenge present within content analysis and provide a more comprehensive approach that explains how the “*specific type of content analysis approach chosen by a researcher varies with the theoretical and substantive interests of the researcher and the problem being studied.*” (citing Weber, 1990; Tesch, 1990; Rosengren, 1981)

Content analysis’ flexibility has necessitated a sort of principled direction which is often seen in a step-by-step type of framework. Russell (2012) identifies seven such steps, namely formulation of a research question, selection of a set of relevant texts, creation of a set of codes or themes, pre-test of the variables, application of the codes to the rest of the text, creation of a corresponding matrix, and finally analysis of the matrix based on the level of analysis required by the research project. These, however, are not meant as strict requirements or to exclude the potential of other minor steps accompanying the process. What is more important is that those steps are constructed in such a way that they respond to the aims for which the analysis was selected.

It thereby becomes apparent that the method presents certain advantages that allow better presentation of the meanings found in interview data. The fact that it provides an avenue to categorisation of the text into themes means it becomes more efficient in ascertaining how the probation officers understand and express certain themes. This shows how content analysis becomes more qualitative in nature within the parameters of the current study, i.e. by focusing on the categorisation of the data in order to produce what has been described as the 'contextual meaning of the text' (McTavish and Pirro, 1990; Tesch, 1990; Lindkvist, 1981). In this way the researcher is now equipped to better appreciate in the present study the (im)balance between public protection and human rights and the tensions between crime control and due process.

## ii. Approach and Categorisation

Category development is defined by either inductive or deductive procedures, whichever best "*develop the aspects of interpretation, the categories, as near as possible to the material, to formulate them in terms of the material.*"

(Mayring, 2013, p.9) The categories or themes are for present purposes developed through a deductive process because the method is expected to work with "*prior formulated, theoretical derived aspects of analysis, bringing them in connection with the text.*" (Mayring, 2013, p.12). It follows, given that a comprehensive literature review ascertaining the themes of the thesis' research area has been done prior to the data collection, the aim is to reformulate the themes by reference to the data and the existing 'theory and material', but also identify human rights understandings and attitudes towards balancing that have not been studied or presented in relevant studies before.

Interestingly, this deductive process of theme reformulation which simultaneously remains flexible enough to identify new areas of interest and novel attitudes or perceptions, is also evident of the overall approach by which the content analysis is hereby applied. Authors tend to identify the approach followed or to be followed according to the extent of existing theory and literature, whereby three distinct types are noticed: conventional, directed or summative approaches to content analysis (Hsieh and Shannon, 2005). It is contended that the directed approach presents the most suitable type to this study as the one closest to its structure and the purposes for which the content analysis was chosen in the first place. In contrast to the other two, the directed approach is often employed when

*“Existing theory or research can help focus the research question. It can provide predictions about the variables of interest or about the relationships among variables, thus helping to determine the initial coding scheme or relationships between codes.”* (Hsieh and Shannon, 2005, p.1281)

This can then support with identifying key concepts in the interview data based on the key observations made in the literature. Definitions of codes and themes can also be accordingly structured so that eventually the theoretical framework, themes, and variables interrelate and inform one another (Potter and Levine-Donnerstein, 1999).

Furthermore, it is noted that this approach creates a diversified version of the step-by-step framework seen earlier in relation to the conventional content

analysis process. The focus remains on the text of the interview transcripts, and how the themes manifest themselves through the medium of language, communication, and participants' experiences and perceptions (Caulfield and Hill, 2018, p.256). Based on that understanding, the study follows a content analysis which can categorise all instances of the phenomenon under examination, i.e.

*“read the transcript and highlight all text that on first impression appears to represent an emotional reaction. The next step in analysis would be to code all highlighted passages using the predetermined codes. Any text that could not be categorized with the initial coding scheme would be given a new code.”* (Hsieh and Shannon, 2005, p.1281)

The approach above ensures that on the one hand, all relevant or potentially relevant reactions of the probation officers are 'captured', coded and subsequently categorised to the corresponding theme; and on the other, any new points of interest or codes not raised in the literature are given attention too.

This, however, does not necessarily mean that the method presents no disadvantages or limitations of which the researcher may need to be aware when conducting the interviews and analysing the data. One such challenge is the possibility of bias. Due to existing observations and criticisms, the analyst may inadvertently lean towards a certain side of an argument, prioritise certain expressions over others or, even miss certain relevant remarks of the interviewees simply because they fall outside the remit of the pre-determined

categories. Further, it is also assumed that by the time of the interview the probation officers participating in the study are already familiar with the aims of the project; the participants have been given information sheets explaining the nature of the academic inquiry in question in the interests of compliance with ethical requirements. The problem that this may potentially create or link to is that

*“in answering the probe questions, some participants might get cues to answer in a certain way or agree with the questions to please researchers.”* (Hsieh and Shannon 2005, p.1283; Kubler-Ross, 1969)

The above of course, important as they might be, do not render the method unworkable or detrimental to the thesis aims. Issues of bias can be tackled by an audit trail process, while other checks, such as use of intercoders, can ensure that the coding process remains accurate and objective throughout. Moreover, an open-mindedness and reflexivity on the part of the researcher are also necessary so that the existing theory does not cloud their judgment in a way that would not allow new but relevant codes and themes to emerge.

It also becomes pertinent to place the analysis within a wider thematic approach which can enhance the understanding of how a thematic content analysis of qualitative interview is hereby manifested. Some have explained the approach above as a version of content analysis based on themes where

*“the analyst looks for themes which are present in the whole set or subset of interviews and creates a framework of these for making comparisons and*

*contrasts between the different respondents. Sometimes themes are inspired by a set of theoretical ideas already espoused by an analyst.” (Gomm, 2008, p.244)*

Although that way of expressing the process may appear exhibiting similar terms to the aforementioned deductive approaches, and echoing notes of Braun and Clarke’s thematic analysis phases, it in all instances maintains a focus on the interplay between themes and interview data, and how the one ‘float up’ from the other. Applying such a perspective or lens reflects why certain aspects, such as choosing and defining the themes, or ascertaining what counts as evidence for a specific theme to be present, and who said what and how they said it, become so central to a study of qualitative design. In order to ensure the communication and understanding of themes, it has been suggested that there can be a questionnaire for the researcher to answer whilst in the process of content analysis:

*“The ‘questionnaire’ asks the analyst: ‘Is this an example of this theme, this theme, this theme or this theme?’ [...] with thematic analysis the range of interesting responses is decided after the interview data is available.” (Gomm, 2008, p.248)*

This thematic approach to content analysis also necessitates a note as to why so much emphasis is given on themes, and what it means to follow such a thematic journey within qualitative content analysis. The rationale is in the first instance based on the wider assumption that the interview is an opportunity through which it can be ascertained what the participants’ experience with the



established themes (Gomm, 2008). This can be applied in the present criminal justice context of probation where the interview provides a means to discover not only what these attitudes the thesis is concerned with are, but also how and why the probation officer adopts certain attitudes towards the balancing equation in question. Caulfield and Hill (2018, p.255) acknowledge this refined quality of qualitative content analysis and explain that

*“[a]s criminological researchers it is very often the ‘why’ with which we are most concerned. Qualitative content analysis allows us to ask more of the ‘why’ by allowing a detailed exploration of key themes that occur within the data we wish to analyse.”*

Studying and reformulating the themes through qualitative content analysis can explain the essence and origins of the attitudes in question. It almost becomes a mind-reading approach because the themes in question are open to interpretation, and are guided by legislature, and external political and popular factors. It is this complexity of interactions that makes the thematically directed qualitative content analysis of deductive categorisation a necessary means to answering the thesis’ research questions, and thereby constituting an evidence of the originality of the present methodological design.

## **e) Timeline of Research Process**

### **i. Documentary Analysis – stages and role**

Once the suitable cases were identified based on the criteria explained in the relevant preceding section, i.e. MAPPA and preferably West Midlands-based supervision (but this was not necessary), concluded, post-2003 and discussion of one or more Convention rights, the documents including the original case report and judgment for each case were downloaded using Westlaw. In the first instance, the reports were read multiple times so that familiarity with their content and structure could be established. It is noted here that in-between collection of these reports and the process of familiarising with their content, the researcher engaged in wider research to identify any journals, books or reports that would be potentially discussing these cases or mention them in supporting their points and arguments. This would subsequently inform the process of analysis and further develop the observations in relation to the balance between human rights and public protection. However, the cases selected do not appear to have been examined under that capacity anywhere else which serves as evidence of the originality of the approach and contribution of this study in incorporating this type of sources and data in an otherwise criminological discussion. This, nevertheless, does not mean that the observations and sources used in the literature review could not be linked to or inform points raised by the reports.

In the next stage of the documentary analysis, the judgments were read again to specifically identify, highlight and extract the three main parts required, namely the facts of the case, the decision, and the ratio decidendi, i.e. the legal

principle and rationale upon which the decision is based. Normally, these come in a specified order in the document – although the ratio decidendi could indeed be expressed at any point in the course of the decision, but for the purposes of the thesis some exclusion process was required. This is because even though the cases may have been based on human rights claims, in the course of the judgment other points, for example potentially relevant to parole, are discussed that are not necessarily relevant to include in the analysis. Also, along the same lines, some description of facts appeared too detailed or again including references to instances that link to aspects in which the thesis is not directly interested.

The facts were specifically examined and presented in the thesis so that an outline is provided to the reader as to what the possible circumstances whereby human rights interferences may arise are. This remains an important statement and contribution in its own right because the literature review has revealed that there may be unawareness on the part of practitioners as to what these circumstances involve, which thus makes it increasingly challenging for them to recognise and address these early in the supervision process. Although it is impossible in the remits of this or any study for that matter to present all the possible circumstances and facts which may give rise to human rights interferences in offender management, their inclusion as demonstrated even in a limited number of cases contributes to the necessary element of illustrating the theory of human rights in probation practice. Also, the inclusion of facts has subsequently informed the interview schedule: In becoming familiar with this type of facts, the researcher is in a better position to discuss these in the interviews with the participants, and – even though not formulating questions

specifically based on these cases since an assumption that they are aware of them cannot be made, the participant still may engage in what happens or what the experience is in hypothetical facts.

A similar approach was followed in regard to the decision and rationale elements of the cases. The analysis presents the decision and the process of decision-making of the court in whether there has been an unlawful interference and what were the aspects that determined the outcome of the claim. This again presents a pivotal aspect of the documentary analysis because it directly engages with HRA duties of probation officers and their interpretation. It also constitutes a contribution that has been missing in the relevant literature and the area in general as there has not been an examination of what the factors and decision-making process involves when alleged human rights interferences arise; familiarity of probation officers with these can provide a better understanding of their HRA duties and avoid allowing situations or conditions that may give rise or progress to violations. As above, this is not to say that in the remits of this or any study is possible to identify all the potential decision-making processes or be able to anticipate, predict and plan on every possible eventuation as, if anything, each case turns on its own facts.

Even more importantly, the decision and rationale further informed the interview schedule and approach. The prior examination of these decisions and decision-making processes would support the researcher in identifying whether the participants are familiar with these decisions either through training or communications by the service, whether they apply any of these when considering the rights of the offender, whether they are familiar with their HRA

duties, and whether their attitudes involve the precautionary element of how can the interference be avoided in the first place. Another important aspect of the decision that has directly informed the interview approach in regard to probes and informed anticipation is that in the course of the decision-making, the courts may engage with the notions and definitions of proportionality, necessity and legality. Although these remain part and parcel of human rights, their meaning is not always straightforward, and given the definitions seen in the relevant policy documents used by practitioners, even more so for in the case of MAPPA.

The final stage of the documentary analysis involves discussions of observations based on the two preceding stages of facts and decision. This has the crucial role of engaging with what has been learned from the case and what are the points of interest to be further examined in the interviews. It is also at this stage of the documentary analysis that the researcher re-read the reports and established links between the judgment and the literature review. For example, this would confirm a judicial acknowledgment of existence of defensive decisions, the importance of relationships, understandings of certain Articles that the probation officers failed to appreciate or incorporate in their assessment, impact of supervision transfers and disclosures of information, and others that are directly linked to the balancing of interests and thereby become all the more important to examine further in the interviews.

## ii. Interviews – stages and experience

- Access

The first step of gaining access to conduct interviews with MAPPA probation officers involved the completion of a standard approval form<sup>4</sup>. A couple of months after the submission of the form the researcher and his supervisors started engaging in requests of information from 'gatekeepers' as to the stage of the application's consideration, responses to which remained relatively slow. The responses tended to reassure of the integrity of the thesis, and that the delays were only due to administrative issues that soon would be resolved. Considering the processes and checks that normally take place before research access can be granted in criminal justice agencies, and the observations that have been made in the present literature review as to the challenges and time constraints on the service, at that stage the delay did not cause any further concern to the researcher, but there was an agreed plan put in place for chasing this further would the issue not resolve in the coming weeks and months.

The continuing delays and administrative obstacles served as the first signs that human rights may potentially be an area that the Probation Service gatekeepers would not be particularly comfortable to allow being researched. This is of course in no way to assume or imply that the delays were intentional or that indeed there were not procedures, checks and balances that NPS had to follow before any approval. What it does echo though is the criticisms seen in the literature review as well as case studies such as Rice's which have shed light to cumulative failures, lack of training, unmanageable caseloads which altogether have not only represented human rights in a rather unfavourable, scapegoating approach. They also constitute circumstances that link to earlier realisations

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<sup>4</sup> Completed copy of the form can be found in Appendix 3.

that in that overloaded climate, regrettably academic inquiry into their practice may not make the top of the agency's list of priorities. This is unfortunate because it is academic research and studies like the present that have the greatest potential to identify the source of the imbalances and have a transformative impact on the service.

A crucial point in the progress of the application was when gatekeepers communicated to the team a request from a senior member to meet with the researcher and discuss the application as well as next steps. A meeting was arranged fairly quickly and most of their questions focused on elaborating on the sections of the application form, type and numbers of probation officers needed and the questionnaire. The next update confirmed access and that the committee approved a request to go out to potential participants so that the ones who would agree to be interviewed could be subsequently recruited. The request would provide an overview of the study and the requirements for participating, i.e. active MAPPA probation officer, West Midlands, experience with different types of offenders and victims. The response was initially minimal, and the service then went into a full inspection which further delayed the process; assurance was provided that a fresh request would be sent to resolve the situation. Shortly after, a further update was received which included a list of names of MAPPA probation officers who had expressed an interest in taking part in the research. The events from form submission to notification of approval and communication of names of participants took one year to complete.

Despite that access approval was granted and requests went out to probation officers, the fact that participation is of course voluntary means that it is upon

the individual practitioner whether they would be interested in being interviewed. The researcher had been aware of this eventuality in qualitative interviews, and due to the reasons explained above in terms of priorities, workload and scepticism, as well as the potential of being intimidated by the mere reference to 'human rights', there has been a realistic approach as to the number of participants that could be recruited in this study.

- Ethics

This study did not raise significant ethical considerations at any stage of the access process or later in the interviews. The ethical approval form, the notification of approval, and communication of ethical compliance to participants prior to the interviews can be found in Appendices 1, 2 and 6(ii) respectively.

The researcher would explain to participants the possible benefits of taking part in the study as well as any potential risks. There was reassurance of anonymity and confidentiality and that they would not in any way be identifiable. Their personal details, specific office locations and names are not included in any part of the research. Details of the supervisory team would be provided to the participants in case they wished to contact them and raise any concerns as well as a summary of the research, consent form and request for the interview to be recorded. The recordings would be stored in a university server and destroyed following completion of the study. It was made clear that they could withdraw consent at any point, ask for the interview not to be recorded, have the interview at their preferred location and request for the interview data not to be used in the analysis or any part of the research.

- Recruitment



The recruitment resulted to a number of nine participants of which notification was coming in bunches of two or three at a time over the course of a couple of months. This gradual recruitment is again telling of the hesitation of potential participants to outright agree to be interviewed, and that there must have been a period of consideration or discussion with colleagues as to whether this is an enterprise in which they would be interested to take part.

Another aspect of the recruitment process with which the researcher engaged directly was the subsequent inquiry into their professional and other characteristics which began in the initial telephone contact and further developed in the actual interviews. During the initial conversation and at the beginning of the interviews, it would be confirmed that they are active MAPPA probation officers, years in service, academic background, types of offenders supervised as outlined in the sampling section of the chapter. This examination was not necessarily done to ascertain if they would qualify to participate in the interviews, but more in the interests of ascertaining the representativeness of the sample. However, if, for example by reason of miscommunication, any appeared to be non-active MAPPA, very new to the service with months of experience and having supervised a single type of offenders, or based in offices outside West Midlands then in those instances they would not be able to be interviewed which was not the case with any of the participants recruited.

- Events and reflexivity

All interviews took place in the participants' respective offices as per their own request and lasted between 1 – 3 hours. What is examined along the events of the interviews below is the question of who the researcher is in the eyes of the

participants, why they expressed to him the things they did or, why they felt the need to bring across certain points.

It was important to the researcher that in the initial phone call with a participant prior to the interview, he does not only talk to them about what is it that the research is concerned with and then arrange a date for the actual interview. What was even more crucial to the researcher during that initial contact is that he clarifies how this is, if anything, a piece of research which is being done because what they have to say needs to be heard. This reassurance proved particularly helpful because many, in an almost apologetic and forewarning manner, would firstly say that they are not familiar with human rights and that they might not have enough to say. The openness and transparency even at that initial stage actually proved quite crucial in putting their minds at ease, explaining that it is probably more informal and discussion-based than they thought and that actually their experience matters.

It was at that point that the researcher started realising that to them he may be but an 'outsider' for whom they probably make assumptions that are farther from reality. But also, how they appreciate this may be a rare opportunity for them to effectively be heard, and someone showing genuine interest in what they do and what their professional concerns are which was quite evident at the beginning and in the course of the interviews.

Despite that it was difficult for the participants to talk about human rights directly throughout the interview, they still appeared engaged and eager to explain the issues that were raised in the questions. The researcher's understanding is that

the participants may have expected that the interview would only be about human rights per se rather than any other problematic areas in the service that may actually be linked to interferences. This has never been the approach of the project which in conducting the interviews has appeared quite useful in many respects. In the first instance, it proved easier for them to relate to the questions. Human rights would be examined through the lens of the wider picture so that the participants would be allowed and given a flexible and inclusive platform to express and discuss the issues that they feel are linked to considerations of needs and rights, whether these were raised in the literature review and the interview questions or mentioned by the participants for the first time. This informed flexibility made the interviews more organic and even though there has been a questionnaire in place, in most of the interviews the participant would answer certain questions without these having to be asked, or would mention one thing at the end of their answer that would be directly linked or leading to the next question on the schedule.

Some of them felt the need to express certain issues without hesitating to explain their concerns with evident transparency. An instance that made particular impression to the researcher in one of the interviews was that the probation officer had brought a printout of the HRA with her and admitted that she has never seen or heard of this document before. During the interview she would reiterate that if it was not for this research, she would probably never come across this area which she now appreciates is one that remains so closely attached to probation and her duties towards her cases. She would even go as far as to admit that she feels she has been failing her offenders by ignoring the existence of the Act and how using it would have made her work

more accountable to the individual. The interviews have quite crucially served as a journey of realisation, an epiphany for the probation officers who have now come to rediscover their craft.

It is argued that the state of being an outsider may in fact have helped with getting the participants to talk and engage with the research. One reason behind this is that they may feel an outsider who is not solely concerned with the practical side of things and comes from the angle of identifying underlying reasons and making recommendations may also be more capable of effecting a change in the service. Indeed, most of the participants would at the end of the interview acknowledge how the areas the research is concerned with has not received the required attention, and they hope that eventually the findings are taken into consideration by the service and implemented into training.

This has given the researcher the impression that this academic enquiry and the platform the participants were given to express their concerns and actually say what human rights mean to them is not something that happens to them often, if at all. This is noteworthy but at the same time should not come as a complete surprise in contemplation of the time taken for the researcher to be granted access. This delay coupled with the conduct of the participants during the interview showing how they may have in fact found themselves in this setting for the first time in their career may also be linked to *“the absence of published empirical research and, one can assume, particular sensitivity about the political (and, in some instances, legal) implications of detailed revelations.”* (Whitty, 2007, p.270)

A noteworthy situation during one of the interviews was that in discussing the relevant issues and her disappointment with the system and the limitations that modern probation comes with, she admits these do not allow her to provide her cases with the service they deserve or accommodate their needs to the point where she appeared hopeless with the direction the service has taken. She would look around the room and show the researcher empty offices and describe her impression of the service as one that is falling apart. This has made the researcher realise that this is a cathartic experience for the participants, an opportunity for them to get out of their chests concerns and thoughts they have been worried about for a long period of time. Even more so, the same participant mentions yet another aspect of this cathartic enterprise by explaining how in the environment of modern probation it is not only the victims and offenders' rights that are ignored, but also their own. She would then elaborate on this and confess that more often than not she wonders 'what about my human rights', 'what about my family life and children' that the agency, she feels, appears to ignore by placing her in situations of unmanageable caseloads and unrealistic expectations.

It may also be noteworthy here to contextualise what is that actually happened during the interviews. It is relevant explore this from the perspective of who is that the interviewee sees in the interviewer (Williams and Treadwell, 2008). This the researcher has further contextualised after reflecting on a comment made by one of the participants as to how she views her working relationship with offenders. She mentions that when meeting the individual at the start of the supervision process she finds herself in a situation where she expects the individual to engage in a conversation about such personal details and

essentially provide a life account that may even go as back as their childhood to a complete stranger. This observation by the probation officer has made the researcher realise that a similar situation develops during these interviews: the probation officers are now in a situation where someone outside the agency whom they have not met before shows an interest in their professional life.

This reminded the researcher that these participants are individuals that interviewing is what they do. Probation officers are usually the ones that conduct the interview rather than the ones being interviewed. This sort of data collection then reverses the roles and places the probation officer outside their comfort zone or in a dynamic that they would not often find themselves in. It may then be that from this perspective the probation officers see in being interviewed a part of themselves in the researcher; they see someone who they can relate to despite them being an outsider. It follows that this thesis' interviews with probation officers may be viewed as a conversation with a reflection of themselves. This further complements the observation that the participants engaged through the interviews in a journey of catharsis and professional self-realisation.

- Transcribing

The main decision to be made here involved whether there should be a full, word-by-word transcription of the interviews, or a rather mixed approach whereby certain sections would be summaries of the points discussed by the participants, and others that would be considered particularly relevant to the research questions and would be directly quoted in the transcripts. In this case, the second approach was followed as the one that appeared mostly beneficial

and appropriate to the semi-structured character of these interviews and the subsequent content analysis.

Due to the semi-structured approach, there were probes, introductory points or clarifications, discussion of aspects that may have not been necessary but rather leading to the main point of discussion, and use of detailed examples from caseload. What this implies is that the data from each interview included details that would not benefit or be used in the thesis by way of a direct quote. Also, the same and other sections of the interview data would actually be more useful for the researcher to paraphrase, summarise or put in his own words. For example, in the case of use of examples by the participants to illustrate their points or explain their decision-making, the researcher found more helpful to listen to the examples several times and then paraphrase these in his own words because in this way the familiarity with what happened and why it was important to the probation officer became more gradual and more memorable, and eventually provided a better template for the example to be incorporated in the actual text of the thesis.

### iii. Content analysis – process and decisions

Following the transcribing process above, the transcripts were initially read a few times in their entirety without engaging in any analysis of the text in the interests of further familiarisation with the data. At this point there may have also been instances where the researcher would go back to the recordings and re-listen to certain sections to confirm accuracy or insert a direct quote of a point that in the course of reading the data appeared more essential to the analysis than initially thought. In the next stage, the transcripts would be read

separately and sentence-by-sentence in the interests of coding the text into the themes initially set in the literature review, but also look for any news ones, any potential re-grouping of the initial themes or any renaming that would more accurately represent the most prominent aspects in the data. This involved highlighting in different colours the transcribed text where each colour represented a different theme. It would not be the case that each sentence would be highlighted as certain points did not necessarily linked to a theme or constitute a new code. Also, it may also have been the case that certain sentences would be highlighted in more than one colours as the same point would be linked to more than one themes. At the same time, the researcher would also make notes on the text or in a separate notebook of initial thoughts, links to the literature, ways that the points would be discussed in the analysis chapter and possible findings or recommendations that the highlighted parts could potentially lead to<sup>5</sup>.

Once the above process was complete the analysed texts were read again to confirm no codes have been missed and were then reviewed and discussed with the researcher's supervisors. Then a matrix and manual were produced where the researcher put together the initial themes, their meaning, and the different quotes or parts of the transcripts that would correspond to each theme. The initial coding resulted in six themes/codes, i.e. two more than the literature review themes, some of which were the same to the initial themes and others constituted renaming or reframing of the initial themes based on the attention

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<sup>5</sup> An electronic example of an analysed excerpt from one of the transcripts is included in Appendix 10 for illustration purposes.



the participants have placed on certain areas. These included Human Rights, Risk, Relationships, Pressures, MAPPA, and Victims<sup>6</sup>.

These six 'new' or revised themes/codes were not entirely new, neither do they represent an aspect that has not been addressed or mentioned to some extent in the literature review. Their reformulation and regrouping though remains significant because it highlighted the areas that matter and inform the most the attitudes of probation officers. Nevertheless, the coding and analysis of the transcripts did not finish at this point and there was revisiting of these initial coding, discussions with the supervisory team as to whether this represents the best grouping of the data, whether there are any cross-overs that could actually benefit from further grouping, whether this coding would provide the best template for subsequently answering the research question in the analysis chapter, and the amount of data and observations that would come under each theme. In view of those considerations and discussions, the researcher returned to the transcripts and engaged further with the coding process and regrouping and examination of the then existing themes. This resulted in the realisation that six themes could potentially lead to fragmentation of the data, repetition of points and imbalance among the different themes that would eventually take the attention away from the subject matter of attitudes. This meant that over-categorisation or an approach to coding that would create a distance among the eventual themes would contradict the above purpose and skew the direction towards the richer picture.

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<sup>6</sup> Definitions from this initial coding are included in Appendix 8.

The above process of revisiting and regrouping lead to the final three themes, i.e. Human Rights and Risk, Relationships in OM, and Victim Rights in Probation. In regard to the first one, the researcher identified that having these as two separate aspects of the same theme more accurately demonstrates the fact that they constitute the two main polarities of the context's spectrum that need to coexist in the attitudes of the practitioners, and how the participants answered questions of human rights in terms of or by reference to risk. As far as the second one is concerned, the participants appeared particularly interested in the matter of relationships both with MAPPA colleagues and offenders, but also how and what other factors affect these relationships. This thereby led to the incorporation of the initial Pressures and MAPPA themes to the Relationships one so that a comprehensive analysis and discussion of what these relationships involve, what impacts on their development, and what their role is in the formation of the balancing attitudes could be conducted. The third and final theme remained comparatively and relatively unchanged to the initial coding. It was, however, renamed to indicate that the place, rights and needs of victims in probation appeared to be a contentious matter for the participants with some differing views as to their duties towards victims, understandings of victims' needs and rights compared to offenders', and impact of exclusion zones and conflicts of interest on offender management.

## **Chapter Conclusion**

The incorporation of documentary analysis has in the first instance proven the indisputable potential of case law reports in informing relationships and attitudes in questions of human rights in offender management. It then more crucially reiterates the contribution the thesis makes through its methodological approach in combining case law and interviews to explore the fuller picture of the balancing between human rights and public protection. The evaluation of the methodology employed has shown that the interpretivist and idiographic approaches provide a fitting template upon which the meaning of the experiences and understandings of the participants can be analysed. The semi-structure interviews appear suitable in providing the desired interpretation bridge between the potentially different situated attitudes or perceptions and the reality of the balancing equation. The purposive and convenient sampling technique has proven the most suitable alternative in contemplation of the current probation environment and the purposes of the thesis. Furthermore, the realisation how the participants see in the researcher both an 'outsider' and a reflection of themselves represents a novel approach in interviewing probation officers and one that has confirmed the catharsis the participants have experienced in expressing their concerns around balancing individual and public interests. The version and process of content analysis followed by this thesis has exemplified the need for a guided flexibility when approaching questions of rights in probation contexts and even more so in instances of multi-agency character such as MAPPA where the contextual meaning of priorities, expectations and balancing becomes particularly relevant.

#### **4. DATA ANALYSIS AND FINDINGS**

##### **Chapter Introduction**

The data analysis chapter places the focus in the first instance on the selected case law and then on the transcribed data gathered in the interviews. The documentary analysis of the cases initially responds to the crucial purpose of examining the facts which have given rise to alleged human rights violations, and, subsequently, the decision of the courts which represents both a manifestation and interpretation of the legal expectations emanating from the HRA. Both facts and decision represent the very elements that the literature review and methodology chapters argued have been missed in previous studies with the result of deepening the unawareness and gap between human rights discourse and probation practice. In addition, the case law analysis informs the content analysis of the interviews by providing a mechanism which can show whether the participants use or are familiar with these or similar cases. The content analysis of the interview data in the second half of the chapter is based on the themes initially developed in the literature review which have been regrouped and reformulated to Human Rights and Risk, Relationships in OM, and Victim Rights in Probation. The analysis of the participants' responses represents the pinnacle of this thesis and has in synergy with the case law brought to the surface the various human rights understandings of the participants, their constructed attitudes towards risk and rights, the levels of balancing involved in MAPPA, and the issues around representation, risk assessment and proportionality.

## DATA ANALYSIS 1 – Case law

- *R (on the application of F) v West Midlands Probation Board* [2010]

EWCA Civ 1470

### Facts

The case above concerned the dismissed application of a life prisoner to be transferred to the supervision of a different probation board and the extent of discretion afforded to the respondent authority in such decisions. F had been under probation supervision since 1983 in the West Midlands area; at the time of the case, F was in prison and under MAPPA supervision of the Staffordshire and West Midlands Probation Trust. In 2003, F entered a relationship with Ms K while he was still in prison; contact was maintained through telephone and prison visits and the two eventually got engaged.

As the Parole Board had not granted a transfer to open conditions, he asked that his supervision is transferred to a different Probation area which would support his relationship with K; the plan he put forward was that, following his release, he would be put in an Approved Premises near K's house and thereby maintain his relationship with her. The transfer would require the agreement of both probation boards but in the case both had refused the transfer. F's appeal for judicial review only concerns the West Midlands Board though because in his argument if the respondent board's decision was to be found unlawful, the recipient board would have or be more inclined to reconsider their decision too.

The decision of the West Midlands Board took into consideration community links, history of F, their own risk assessments, MAPPA panel views, viability of the release plan proposed by F and the discretion the Board is afforded in the exercise of its powers to conclude that the risk posed by F was so high that it was not appropriate for him to be transferred or indeed reside with K.

### Decision

The court examined two main issues in the present case following the contentions of the appellant: first, that the Probation Board erred in his decision to take into account its own assessments when the request related to matters of release where the responsible authority is the Parole Board (the 'misdirection issue'), and second, that the refusal to transfer supervision in the circumstances of the case constituted an unlawful interference with the Article 8 rights of the F and K based on the legality, proportionality and necessity of the decision.

It is noted that the former issue is not discussed in this review, and focus is placed on the second, i.e. the 'article 8 issue', as it is directly relevant to the purposes and context of the thesis.

The court initially refers and reminds of the aims to which the Probation Boards were to have regard as these are found in section 2 of the Criminal Justice and Court Services Act 2000 and include (a) the protection of the public, (b) the reduction of re-offending, (c) the proper punishment of offenders, (d) ensuring offenders' awareness of the effects of crime on the victims of crime and the public, and (e) the rehabilitation of offenders. The judgment furthermore adds that the boards enjoy wide discretion in matters of transfer of supervision since

this area is not the subject of specific statutory provision [15]. However, they need to still have regard to the above aims, and also the wider key principles of supervision transfer outlined in the Probation Circular PC25/2007, para 1.1.1 that stipulate “*Public protection should be the overriding consideration in any decision to transfer a case ... At all times there should be absolute clarity about who the Offender Manager is ... Case transfer arrangements must be subject to liaison and planning between the home and receiving offices/areas. Any decision to transfer the case should take account of and be consistent with the objectives of the sentence plan.*”

In regard to the ‘article 8 issue’, the court’s direction becomes informative to human rights considerations in probation contexts. The judge is satisfied and prepared to assume that the relationship between F and his fiancée in the circumstances of the case is sufficient to engage Article 8. He also refers to the European Commission’s case of *McCotter v United Kingdom* (Application No. 20479/92, decision of 1 September 1993) to explain that in the case of supervised prisoners the concept of ‘family life’ must be given a wider scope, so much so that Article 8 places a responsibility on the state to sustain their ties with the people in the community and thus facilitate their ‘social rehabilitation’ [27].

However, the court states that “*the refusal to transfer interferes only to a very limited extent with any rights under article 8(1)*”, and that it should be underlined that in the present case the real obstacle to F and K living together is not the refusal per se, “*but the probation service’s assessment of risk and of the unviability of the proposed release plan.*” [28]

LJ Richards further explains the qualified nature of Article 8 and that any interference is justified when in accordance with the law, proportionate, necessary and in the interests of the aims outlined in Article 8(2). He refers to the ECtHR's case of *CG and Others v Bulgaria* (Application no. 1365/07, 24 April 2008) [39] that discusses the meaning of 'in accordance with the law':

*“domestic law must be accessible and foreseeable, in the sense of being sufficiently clear in its terms to give individuals an adequate indication as to the circumstances in which and the conditions on which the authorities are entitled to resort to measures affecting their rights under the Convention. The law must moreover afford a degree of protection against arbitrary interference by the authorities. In matters affecting fundamental rights it would be contrary to the rule of law for a legal discretion granted to the executive to be expressed in terms of unfettered power. Consequently, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, so as to give the individual adequate protection against arbitrary interference”*

On the basis of the above definition, F had argued that in the absence of a policy document that clarifies the circumstances and conditions on which transfer of supervision is appropriate, the exercise of the relevant discretion becomes unfettered and arbitrary. Indeed, the court noted that the direction of the Circular PC25/2007 is limited because it mostly relates to cases under probation supervision in the community – which does not represent this case, and that thus further guidance would be helpful. LJ Richard recognised the



broad discretion afforded to the boards on the matter, but nevertheless rejects the exercise of the board's transfer power is not in accordance with the law. He finds that the direction of the aims outlined in the 2002 Act's section 2 coupled with the general key principles in transfer cases in the relevant Circular are such that they make the direction clear and accessible and the discretion "*neither unfettered nor such as to give rise to the risk of arbitrary interference with rights under article 8(1).*" [32]

In response to the proportionality argument of F in that the Parole Board role provides sufficient consideration to the aim of the protection of the public such that it renders the refusal of the transfer by the Probation Board unnecessary, and that, based on *McCotter's* emphasis on 'social rehabilitation', the decision disproportionately interferes with F and K's family life rights, the court reminds of the limited extent that these transfers interfere with Article 8. Interestingly, LJ Richards continues to state that in the present case it is relevant to consider that F has been under the supervision of the same probation board for many years which entitles the board to consider whether there is 'good reason' for the transfer to proceed and the viability of the proposed plan; in the opinion of the court this thereby sustains the proportionality of the decision. He also reiterates that the Parole Board's role is not relevant to consider in the question of proportionality because this is not a case about release: "*It was a decision about which of two local probation boards was to exercise, in relation to the appellant, the relevant functions of the probation service within the overall scheme relating to the management of life prisoners.*" [35]

### Observations

The case reminds that the protection of the public is well established in statutory law. This is not only stated in the aims outlined in relevant Act above, but it is also reflected in the broad discretion afforded to the probation service. It can be said that this allegedly unfettered and precise discretion is underlined in such a way as to ensure that public protection is preserved in all circumstances.

Although the option of transfer of supervision does exist, it seems rather unrealistic for a MAPPA Level 2 or 3 individual's application to succeed. As far as the risk posed by the offender has to be 'minimal', the transfer of supervision is an option reserved for a limited number of individuals. Furthermore, the language of the court creates the impression that interference with the offender's rights may be justified solely on the basis of the above 'overriding' statutory aims. That is to say, the court creates a suggestion that may be misinterpreted by the practitioners into a license to favour those aims, i.e. public protection and punishment of the offender, at the expense of human rights expectations. Indeed, there is no reference or reminder of the human rights duties placed on public authorities following the HRA 1998 in the aforementioned Act and Circular, and that regard may need to be given to the rights of individuals that come under the discretion of probation.

It is also noted that terms such as 'proportionality' or 'unnecessary' remain rather subjective and open to interpretation in individual cases. The issue of transfer of supervision indeed remains a contentious one especially in contemplation of the underlying factors supporting such decisions. It thereby follows that the courts may be seen as making what can be described as 'policy decisions'. On the one hand, allowing a large number of appeals may lead to a

'floodgates' situation where an increased number of individuals would apply for transfer to their preferred location. On the other, such decisions cannot but be influenced by several practical factors, such as availability of resources and personnel in the new location. It may well be the case that the proposed probation area is not in a position to accept the 'applicant', even if they pose minimal risk, on the basis that it could compromise their efficiency in dealing with their existing cases. However, this does not mean that the rights of the offender should be 'sacrificed' in the process.

This is yet another instance that proves the fine line between the conflicting expectations probation officers are faced with, and that the commitment to human rights means appreciating both the law and the circumstances of the individual. Transfer of individuals may be encountered in offender management and it may thereby be anticipated that this study's participants make references to relevant instances from their caseload. This makes it interesting to observe whether they make a reference to the above or similar cases in the form of guidance that is used when management plans are drawn, or if human rights is one of the considerations examined when they receive such requests from individuals they manage in the community. The same observation also develops the process of answering the research questions whereby in the first instance the points raised by the court signify how there may be gaps in the extent probation officers take regard of human rights when managing offenders. This is because of two notable statements made in the decision which although appear to have been neglected by the service in this case, also provide a noteworthy contribution to knowledge in the area. In the first instance, Article 8 creates a responsibility on public authorities to sustain their ties with the community and

facilitate their social rehabilitation, i.e. drawing a direct link between human rights and rehabilitation, and then the viability of an RMP is what can sustain its long-term proportionality. These constitute pivotal elements of a shift towards a human rights practice exhibit how essential the awareness of case law remains when managing offenders under the MAPPA framework.

- *R (on the application of O) v National Probation Service London* [2009] EWHC 3415 (Admin)

### Facts

O's application concerned an appeal for judicial review of the respondent board's decision to preclude him from appearing in a television show whilst he was released on license pursuant to s.246 of the Criminal Justice Act 2003. O's supervising probation officer stated that the service was willing to approve O's involvement, subject to conditions including that references to the offence or victim would be edited out of any broadcast. However, the chief probation officer later expressed a concern and wished to reject O's request to safeguard the victim and the public confidence in the probation service and the CJS in general.

O argued that the above statutory aim referring to the punishment of offenders did not apply in the circumstances of the case, i.e. management of offenders released on license. Also, the appellant believed that the board's decision was made out of fear of possible public and media criticism in case the offender finally appeared on television. Other points in O's application that appear relevant to the thesis' enquiry included the assurance that the victim's details would not be disclosed during the show, the interference with the individual's Article 8 rights to private life that the prohibition would cause, and the unlawfulness in overruling the initial approval.

### Decision

The court initially makes reference to the aims outlined in s.2 of the 2002 Act as in the case of *F*, namely protection of the public, reduction of reoffending, punishment, impact awareness and rehabilitation. It is then noted that the relevant show is not broadcasted live and that there is a 15-minute delay during which the producers can edit out any inappropriate material. The judgment also refer to the probation officer's notification of approval for the claimant to participate in the show provided that the producers acknowledge that O is on license and that breach of the license could result to recall and that any reference to the offence or the victim will be edited out. The court places emphasis though on the reasons the chief officer provided in later withdrawing the approval which included the impact the participation of O would have on the victim and the public confidence in Probation and the CJS in general. MJ Beans also explains that the bedrock of the claimant's argument was based on irrelevant considerations of unjustified media criticisms, the reasons for refusal were not linked to the objectives of the license, errors of fact, engagement of ECHR Article 8 and that the refusal was a disproportionate and unnecessary to achieve the aims of Art 8(2) and finally improper delegation.

The court was not persuaded in the circumstances that any of the grounds raised by the applicant could allow an appeal for judicial review. Preceding case law of *R (on the application of U) v Secretary of State for the Home Department* [2003] EWCA Civ 1130 considered that the aim in relation to punishment of offenders does apply in instances of licenses that form part of a sentence initially set by a judge. More importantly, MJ Beans acknowledges that

*“when considering what restrictions can properly be placed on offenders as incidents of supervision on licence, as part of a sentence of imprisonment, regard can be had to the expectations of right-thinking members of the democracy under whose laws a judge has imposed that sentence.”* at [32]

The court here shares the opinion of the respondent authority, namely the concern in the participation of an offender in a TV series, where they may be promoted as a ‘celebrity’ and have financial gain as a result, could potentially compromise the public confidence in the system.

The judgment also makes a notable reference to the issue of victim impact. It was recognised at [36] that, in the circumstances, the impact of the TV appearance of the individual on the victim should not be confined to the latter being named. There may have been merit in that the offender’s

*“appearance on the programme for days or weeks while still on licence would cause the victim distress, and would also be likely to lead to the details of the case being revived in the media as a whole”* at [36]

Although the restriction could only be temporary and following the expiration of the licence the offender could technically return to the show, the measure is understood to still be of ‘some assistance’ to the victim.

The court goes further to consider Article 8 rights only to conclude that they were not engaged in the circumstances of the case. What is of interest though

is the observation made in the judgment that even if they were relevant, the court would still have to dismiss the appeal.

Finally, the court also explained that the Probation Service is not immune from the hierarchical organization that applies in most public authorities. The fact that the initial approval given to the appellant by the supervising officer was later overruled by another officer higher in the reporting line did not make the restriction per se unlawful; the approval could be lawfully overruled by a line manager or even a chief officer. This links to the observations made in the literature review as to how certain pressures probation officers experience, or punitive attitudes they adopt, may be symptomatic of certain media, socio-political or, as hereby demonstrated, even managerial expectations.

### Observations

The decision creates a rather mixed impression as far as the expectations and responsibilities of probation officers are concerned. It is noteworthy that the judgment quotes the chief officer's witness statement in length as it raises considerable points;

*"it was obvious that the media would similarly report on it in a manner which maximised the sensational aspects of the programme and the conduct of the celebrities involved; that no-one had any control over the manner in which the media covered this programme; and that these matters all posed significant if not inevitable risks to public confidence in the system of criminal justice and probation if a person took part in such a programme while still serving his sentence, and it is the Probation Service which is ultimately responsible and*



*answerable for this matter. This is not a “fear of unjustified media criticism” as described by the Claimant's lawyers. Rather it is as I have described, namely a concern to safeguard public confidence in the system of criminal justice and probation”*

The chief officer does appear concerned with the manner that the potential participation of O may be covered by the media, and how that could compromise public confidence in the CJS. Even though there is evident self-contention that his attitude is not one of ‘fear of unjustified media criticism’, the rhetoric employed cannot but remind Nash’s (2012) explanation of defensive decisions made by practitioners to avoid vilification if anything goes wrong. The argument that this type of decisions constitutes a reality and become more punitive or restrictive in nature is reflected in the chief officer’s confession that if the risks he outlines materialise *“it is the Probation Service which is ultimately responsible and answerable for this matter”*, as well as in his refusal to allow O to appear on the show despite the producers’ assurances. It thereby becomes pertinent to echo here the assertion made in the literature review as to how attitudes of probation officers towards balancing human rights and risk are not their own, but rather the product of external socio-political pressures or, as in the present case, the demands of line managers and the expectations of the service in general.

In response to the above attitude, the judgment refers to *R (Mellor) v SSHD* [2002] QB13 where it was agreed that public perception is a legitimate element of penal policy, and also *R (Nilsen) v Governor of Full Sutton Prison* [2005] 1 WLR 1028 where the court accepted that in placing restrictions on individuals

deprived of their liberty regard is given to the considerations of the right-thinking member of the community, to explain that

*“I consider that right-thinking members of the public would take the view that an offender serving the non-custodial part of a sentence of imprisonment should not be allowed to take part in a high profile, controversial television production, promoting his status as a celebrity and with considerable financial gain.” [33]*

Even more interestingly, MJ Bean also goes on to comment on the propriety of the chief officer’s overruling to declare that “the decision is one for him, not for me.” These observations not only confirm the impact of public perceptions and expectations on penal policy, but also follow the literature review in that they exhibit the same potential in affecting offender management and probation attitudes. MJ Bean’s declaration is also telling of the discretion afforded to practitioners but also of the limited, umpire role of the judiciary. The phrase above explicitly demonstrates Whitty’s (2007, p.274) observation as to the *“longstanding judicial reluctance to become involved in adjudicating on ‘expert’ risk management of offenders.”* It hereby becomes even more pertinent for MAPPA probation officers to be aware of case law of this nature or, in the instance of the interview data analysis, to consider whether and how the participants are already aware or take into account such court directions.

The same realisation is applicable in considering the court’s reference to victim impact. The opinion on victim impact here may provide direction to probation officers when considering the rights of victims. It implies that offender management plans do not operate in a vacuum and cannot be viewed in

isolation from what is in the interest of the victim. The case thereby becomes an illustration of the many possible ways the needs and rights of the victim may be engaged in probation and interact with the expectations of the individual. It further confirms the observation drawn from the literature review in that the probation officer's risk assessment is not confined to balancing public protection and offender rights. Victim rights and considerations constitute an area that requires the same level of attention in the pursuance of a rights culture. It remains questionable, however, whether the recognition of victim impact in the current case is solely based on the above understanding. Following the termination of the licence – and the court recognises this, the appellant would be permitted to participate in the show thus rendering the protection initially afforded to the victim only temporary. That is to say, there appears to be a paternalistic appearance of care towards the victim that is reminiscent of historic victim policies that have failed to conceptualise the needs of victims into rights.

In the court's direct consideration of Article 8, reference is made to *R(Countryside Alliance and others) v A-G* [2008] AC 719, to support its decision why the Article is not engaged in the circumstances of the case. Although a huntsmen case, *A-G* is employed by MJ Bean to explain that it is rather questionable to conclude with certainty that loss of an opportunity to work – which was the case in the situation of O since he was offered a considerable sum to appear on the show, comes under any of the Article 8 areas of private and family life, home or correspondence. Also, the temporary element of the restrictions was not sufficient enough, according to the opinion of the court and the aforementioned authority, to engage Article 8.

What may prove even more crucial to the discourse of human rights and public protection, and in turn to practitioners under MAPPA as well, is the court's stance on the role of 'public confidence in the CJS' in balancing exercises. MJ Bean explains that an interference with Article 8 would be proportionate to the legitimate aim of 'maintaining public confidence in the CJS': "*the proposed interference with them is limited and proportionate to the legitimate aim of maintaining public confidence in the CJS.*" [38] It may be argued that recognising the matter of public confidence as a legitimate aim bears substantial as much as far-reaching connotations. On the one hand, there is indeed an element of unpredictability in how the individual could be presented in the TV show, and how that representation could be later received by the public or the victim. The court and the Probation Service may be justified in having an interest in preserving public confidence and faith in the system as representatives of the judiciary and executive strands of the state respectively.

It is worth noticing, however, that the statement remains rather controversial because nowhere in Article 8(2) is 'maintaining public confidence in the CJS' referred to as a legitimate aim upon which an interference by a public authority can be justified. It thereby appears that in the absence of legislative or judicial authority on the matter, the court has employed a purposive approach to the interpretation of Article 8's legitimate aims to include 'public confidence'. It is also remarkable that the court does not appear to present this addition to or novel interpretation of the Convention as the irregularity that it constitutes, and indeed no specific reasons are given by the judge as to how 'public confidence' was derived from the wording of the Article.

The propriety and evaluation of this judicial innovation is beyond the purposes of this thesis, but what remains relevant is how this instance of judicial innovation and the earlier observations on Article 8 engagement reiterate the necessity in probation officers staying up to date with human rights case law. An increased awareness of judicial developments in the area and familiarity with judgments on offender rights cases may not only avoid similar complaints reaching the courts in the future; but also promote an accountable probation practice, one that can evidently respond to the expectations of both victims and offenders, and justify to other MAPPA agencies the basis of more inclusive, rights-oriented attitudes. This also directly informs the research questions of the thesis, primarily in regard to the factors affecting the attitudes of probation officers. The case provides a good demonstration as to how underlying factors such as maintaining public confidence in the system, potential media criticisms of actions of public authorities, organisational hierarchy in offender management and impact of offender management decision on victims continue to exert an influence on the extent of balancing between individual and public interests which may subsequently be reflected in the decisions made by practitioners.

- *R (on the application of A) v National Probation Service* [2003] EWHC 2910 (Admin)

### Facts

The case above concerned the application of A for judicial review of the defendant's decision to disclose information regarding A's previous murder conviction to a housing and sales manager. The applicant argued that it was wrong for the Probation Service to require disclosure when the Parole Board only ordered life licence with direction as to where A would reside. Further, A also underlined that such a disclosure would cause him harm in the form of interference with his Article 8 right to respect for his private and family life, home and correspondence. The Parole Board's assessment held that despite that A took diminished responsibility due to mental health issues for the murder of his wife, the risk of reoffending remained minimum. The judgment refers to the Board's assessment where it was said that

*"While it is clear from most of the reports that A does have entrenched attitudes and has little insight into the index offence, there appears to be little to indicate much risk of his reoffending. Indeed, provided that he is monitored closely were he to enter into another relationship, it seems to the Panel that any risk he poses to the public as a whole is very low."* At [4]

Once the case was directed to the Probation Service though, the appointed officer informed the claimant that a disclosure to the accommodation manager would be necessary, and that a risk assessment by the OASys tool would be undertaken. Although OASys indicated low risk of reoffending, the report still

insisted that if he does reoffend there will be extremely serious consequences on the victims, a statement that brought the case under the consideration of 'risk of harm'. Interestingly, another element that lead the probation officer to the above assessment is

*“the fact that A has always believed he was not thinking rationally when the offence occurred and that a plea of diminished responsibility should have been accepted meant that he has not sufficiently addressed his offending behaviour during his sentence.”* [at 6]

The Probation Service appear to translate the fact that he has not sufficiently addressed his offending behaviour during his sentence into a need for further rehabilitation measures and thus according management plans. This immediately raised concerns with the probation officer who then placed A under medium risk of harm. Another important element is that, during a relevant meeting, the sales consultant appeared anxious to obtain information about A's past which caused more concerns around the need of disclosure and the well-being of the rest of the residents. To that end

*“The assessment also states that if information is not initially shared but found out at a later date, there could be serious implications for all concerned, including A himself.”* [at 8]

The relevant statement also referred to the Lifer Manual to support the assessment. The policy document in question provides that in matters of public protection, advising third parties of the nature of the offence and the

implications of the supervision process need to be taken into account. It also provides for a presumption in favour of disclosure to specific groups of persons one of which is accommodation suppliers/providers. Owing to the above, the statement concluded that any relationships he develops with elderly or vulnerable people would have to be closely monitored, and considered that the disclosure represents a 'necessary safeguard'. The probation officer further stated that MAPPA guidance would be followed since

*“there are identifiable indicators of risk of harm and the offender has the potential to cause harm but is unlikely to do so unless there is a change of circumstance. In A's case a change of circumstance could be the deterioration of his mental state or the inability to deal with issues within the relationship.”* at [13]

The risk assessment, past convictions, and relevant guidance notes indicated that A would normally come under Level 1 of MAPPA whereby offenders are managed by a single agency. However, further consideration no longer supported the above and the probation officer concluded that

*“The fact that [A] has committed a murder and intends to place himself in a situation where he could form relationships with older and possibly vulnerable women, and is reluctant for housing providers to be informed of his offence, means that the case can no longer be managed at level one. The risk management and disclosure issues require his case to be considered by a multi-agency meeting at level 2.”* at [17]



They also confirmed that in view of the above development the disclosure would be controlled and monitored under the Data Protection Act 1998 and the residents of the complex would not be directly informed of the offence, unless a disclosure to a partner becomes necessary. The reassurances offered did not persuade A in terms of protection of his Article 8 rights who specifically argued that he would still not only be shunned, isolated, and unable to form friendships. The disclosure might also affect the willingness of the provider of the sheltered homes to sell the property in question to him.

### Decision

The judgment firstly reminds of the function and role of the National Probation Service as outlined in Criminal Justice and Court Service Act 2000. It underlined that according to sections 1 and 2, these include among others the rehabilitation and supervision of convicted offenders as well as the protection of the public, the reduction of reoffending, and ensuring offenders' awareness of the effects of crime on the victims of crime and the public. MJ Beatson reached a conclusion granting the relief sought based on considerations of proportionality. He notes that the Parole system and the Probation Service are two separate entities and agencies of the CJS, so the latter was not in any way bound to accept the assessment of the former. But this is not to say that the factors the parole board took into consideration for its own assessment cannot be used by the probation officers in their assessment too. As such, he thought indeed relevant for the probation officer to take into account that A did not sufficiently address his offence because this remains a matter related to one of the probation service's functions, namely rehabilitation of offenders. In terms of the disclosure as a situation that may unlawfully interfere with Article 8 right to

private life, the judge explained that it can only be justified if it is considered proportionate and necessary to the circumstances of the case. He also noted that the private nature of the housing provider does not render the disclosure automatically disproportionate, especially since its main purpose is so that the manager can advise the supervising officer of A's health and relationships.

The judgment also identifies the flaw in the risk assessment process where it neither addressed A's rights nor did it balance the need of disclosure with the harm that A expected such a disclosure could potentially cause. According to the judge's understanding, the probation officers here approached the question of disclosure from the wrong starting point. Therefore,

*"It remains open to the probation service to revisit this matter and to make a fresh decision starting from the point that there has to be a pressing need for disclosure and, in particular, in view of the MAPPA guidelines, that disclosure to third parties is exceptional."* at [50]

### Observations

The case does raise notable matters in relation to the human rights duties and expectations on probation officers as well as the functions of the service as a whole. Firstly, it touches on the relationship between Probation and Parole. It underlines that although the two share certain similarities in relation to offender assessment and risk, their functions are different. Following the judgment's rationale, it would be wrong to assume that the one is in any way obliged or expected to follow the findings and assessments of the other. The judge is right to underline the distinctions between them since a 'merging' of their functions

would rather complicate matters within two quite specialised systems<sup>7</sup>. This also means that probation officers cannot justify decisions regarding offender management or offenders' rights solely on previous assessments done by the parole system. Such a practice links to the issues regarding managerialist justice raised in the literature review, and how, in many instances, practitioners adopt expedient methods to cope with increased caseloads at the expense of due process. Even in cases where previously done assessments by other agencies appear similar to pending ones, engagement with the individual and review of information must be established to ensure that the human rights requirements in terms of necessity, proportionality and legitimate aims in cases of qualified rights have been observed.

The case also reminds the assessors that the risk of reoffending – whether the individual will re-offend and what is the probability of this within a particular time scale, is different from the risk of harm – whether the individual will commit a harmful offence and in particular an offence of serious harm. The distinction in question is indeed a crucial one because each type informs the probation officer accordingly and can thus alter the resulting management plans as well as the extent that the human rights of the individual may be lawfully interfered with. The same observation not only reminds that probation and parole are different in nature and approach, but it also confirms the challenges that a multi-agency framework, such as MAPPA, may face in establishing cooperation, communication and balance of priorities among the different agencies involved.

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<sup>7</sup> It is noted that the Parole system follows separate processes, assessments and priorities in relation to questions of bail and remand which are outside the remit of this thesis.

Moreover, the case is a good example of defensible and defensive decisions of probation officers. The reading of the statement above regarding likelihood of reoffending implies that the probation officers may lean towards disclosure in fear of later criticism should things go wrong. The statement clearly held that would there be reoffending by A, the consequences could be grave for all involved, even for the offender. Although the statement may seem paternalistic, it rather confirms the defensive decisions made by probation officers in order to avoid potential popular and media criticisms for employing 'soft' measures. It thereby becomes arguable whether one of the intentions of the statement is indeed to protect the offender from harsher punishment in case of reoffending. This is supported by the fact that if the drafters did have such a protective attitude towards the offender, they would have then been more cautious not to interfere with the individual's Article 8 rights in the first place, and incorporate relevant safeguards in relation to that eventuation too.

It is also worth noting the broad implications of Article 8 for individuals released in the community. The case is a good reminder that Article 8 is not merely a right to privacy but rather includes rights to private and family life, home and correspondence and thereby has wide-ranging implications for offender management that may be engaged if no due consideration is given to the circumstances and needs of the individual. In the previous cases examined above, the Article has been also raised as a ground of challenging management plans that restricted socialising and the forming of meaningful relationships under its family life scope. The current case though reminds that housing and accommodation are not only important risk factors well-established in community reintegration interventions. Due to the information requests that the

relevant accommodation applications normally involve, and even more so in the case of MAPPA offenders, these also raise significant human rights implications in regard to disclosures of this information. The claimant's argument in relation to the potential reluctance of the owner to sell in view of the offence committed is not unsustainable. The real estate market is already demanding and thorough for citizens given the detailed mortgage processes, credit checks and conveyancing schemes in place. It may thereby be appreciated how detrimental to a sale, and thereby to the individual's prospects of reintegration, an offence disclosure may potentially be, and that such a disclosure should thereby only be done when it is considered necessary, i.e. it answers to a 'pressing social need', pursues a legitimate aim and is proportionate.

Further, the judgment brings to the surface certain issues and mishaps of the risk assessment tools and the impact of these on human rights considerations. Although Beatson MJ acknowledges that "*The probation service used recognised tools for assessing risk, tools with which it is experienced*" at [48], he then went on to admit that these did not really take into account the rights of the offender. More specifically, he notices that although they were referred to in initial statements, they were not reconsidered 'afresh' in subsequent meetings which echoes the concerns expressed in the literature review regarding the MAPPA Guidance 2012's minutes structure. This means that compatibility with human rights and associated duties of probation officers represent a continuous process whereby all existing and new information may be examined and re-visited in the lifetime of the licence or management plan and re-considered in light of changing circumstances and proportionality.

It is statements and observations of this nature that make awareness of and familiarity with case law a necessity for probation officers. Implementation of these directions ensures both human rights compliance and reduced incidence of complaints based on human rights grounds, as well as a more accountable, transparent attitude towards the interests of both the individual and the public. It thereby becomes relevant to consider whether MAPPA probation officers are familiar with this type of cases or how to incorporate judicial direction on disclosures in their assessment to ensure human rights compatibility. As established in the literature review, the MAPPA guidance does promote proportionality and necessity but in a rather limited and incomplete manner which makes the additional guidance the case law may provide on human rights interpretation even more essential.

The analysis of this case makes a direct contribution to knowledge not necessarily through the court stating that Article 8 is not merely a right to privacy – which is a basic definitional observation, but rather the need to state this in the course of the decision. The inclusion of these observation links to the present research questions as it implies on the one hand, how probation officers may not actually be aware of the scope of human rights legislation, and, on the other, how the same realisation constitutes a symptom of inadequate training and disregard of the totality of human rights implications by the service. In addition, the observation of the court regarding the relevant meeting provide an answer to the research question on operation compliance whereby the judge notices that human rights have not been considered in meetings nor has balance been attempted between the need to disclosure and the harm that such disclosure could cause to the individual. These constitute telling signs of the

limited extent to which the NPS ensures operational compliance with human rights and the prioritisation of a risk-averse than a rights-based practice.

- *R (on the application of R) v Secretary of State for Justice* [2016] EWHC 329 (Admin)

### Facts

The claimant in this case sought judicial review of the conditions imposed upon his licence on release from prison on the grounds of unlawfulness and interference with his Article 8, and Protocol 1 Article 1 Protection of property. The individual had a history of sexual offending against children and his current claim involved review of the policy PSI 12/2015, which imposed additional conditions on his licence. The claimant's previous convictions involved sexual assault of his stepdaughter and making and possessing of indecent images of children. He was also diagnosed with paedophilia and reactive depression in a report commissioned by the responsible clinical facility. Upon release from imprisonment, the claimant was convicted whilst on licence of five further counts of making indecent images of children. He was subsequently sentenced to four-year imprisonment and four years of extended licence period. The licence conditions relevant to this judicial review restricted his access to a camera, mobile phone, his home and family, and contact with his grandson or other children (para [8]). The claimant argued that the conditions imposed are inconsistent with the defendant's PSI 12/2015 policy and that the interference with his rights was not lawful and proportionate in the circumstances of the case, having a 'devastating' effect on his quality of life. As a result of the conviction and imprisonment, he lost his employment while *"[h]is ability to obtain employment has, he contends, been significantly affected by his record of convictions and also by the restrictions placed upon him in terms of computer use when his principle skills are in the field of IT."* [11] Contact with his family



and grandchildren was indirect through the use of greeting cards without printed message. It is noteworthy here that the Family Court to which the matter of contact had been subsequently directed as the one 'best placed' to examine what is in the interests of the children,

*"[t]he claimant states [...] was unwilling to make any order that might contravene the conditions on his licence and therefore only indirect contact was permitted."* at [14]

### Decision

MJ Dove ruling in the present case referred to the Criminal Justice Act 2003, section 250 in relation to the imposition of conditions on licences upon release from prison and also the Criminal Justice (Sentencing) (Licencing Conditions) Order 2015 which provides the basis for the imposition of additional conditions. He further quotes the aims of the relevant policy in PSI 12/2015, para 1.4, which reads

*"The aims of the licence period are to protect the public, to prevent re-offending and to secure the successful re-integration of the offender into the community. Licence conditions should be preventative as opposed to punitive and must be proportionate, reasonable and necessary. Governors must have procedures in place for monitoring and enforcement."*

The policy document thus is mostly concerned with public protection, recidivism and reintegration of the offender. It is also noted that the rationale is for its implementation to be more preventative in nature which aims to protect the

public through rehabilitation and ensuring that the risk of further offences is minimised. What is also interesting is how the language used to describe the conditions to be imposed reminds the wording found in the ECHR Articles, i.e. proportionate, reasonable and necessary. The policy even goes on to define in its paragraph 2.31 the terms necessary and proportionate, an initiative which has been almost absent in the relevant case law and legislation. It explains that

*“Necessary means an appropriate way of interfering with the right bearing in mind the objective it is sought to achieve and proportionate means there is no less intrusive means of achieving that objective.”*

It also emphasises that

*“any applicable restrictions must be considered carefully and be no greater in extent or severity than is needed to minimise the risk of chance encounters whilst taking into consideration the effects on the offender's ability to visit family or friends, undertake work or carry out other legitimate activities [...] and it should be recognised that the complete eradication of any risk will often not be achievable”*

The policy refers to victims as well and allows for strict ‘no contact’ conditions and are not limited to the index victim(s):

*“It could be the victim of a previous offence [...] or the family of the victim of the index offence, where there is grounds to believe that the offender may target them or seek to make contact even though contact may cause distress. [...] It*

*might also be appropriate to have a “no contact” or exclusion zone condition for someone who is at risk of becoming a victim, or who is vulnerable to the particular risk posed to the offender.” at para 2.32*

It follows that the conditions envisioned by the policy can restrict contact of the offender with previous, index and future/potential victims based on their offending career or other relevant information, e.g. history of domestic violence, input from social services. Although this seems to be in the interests of minimising re-offending and enhancing the rehabilitation process, at the same time it directly raises Article 8 issues where the victims involved or could potentially be involved are children or grandchildren of the individual. This appears to be creating a potential contradiction within the policy itself: On the one hand, it recognises and warns of the effect of licence conditions on the ability of offenders to visit family or friends, and on the other it seems ready to impose no contact with an indeterminate group of past and future victims.

The court states at [24] that the issues in the present case are whether or not, in terms of the Article 8, the imposition of the conditions are proportionate in the context of the legitimate aims which they pursue, and whether or not, regarding the claimants enjoyment of his private property, the condition is proportionate in the particular circumstances of his case. MJ Dove explains that in relation to the no contact with victims condition found in the claimant’s licence’s xiv and xv, the defendant is entitled to impose the restriction due to the nature of the claimant’s offences, and recognises that the provision is for the benefit and in the interests of potential victims. He further notices that

*“the policy does not simply apply where a camera has been used in previous offending, but also applies in cases where there is a risk that “behaviour could escalate whereby a camera could potentially be used in future offending”.” at [33]*

Although no camera was used by the offender himself when the offences were committed, the risk of use of a camera in order for similar offences to be committed by the claimant was enough to justify the restriction; *“they were inevitably offences in which a camera had been used by someone.”* [42] The judge finds the interference here reasonable in the circumstances of the case, but he also appears to indirectly acknowledge the potential arbitrariness of the measure. He explains that justification for the restriction is found in the fact that it is not intended to apply ‘in perpetuity’. It is rather imposed in the interests of rehabilitation and eventual reintegration of the offender by controlling the risk according to their previous convictions. The court concludes that

*“the legitimate aims of imposing the conditions in relation to the management of the risks of reoffending are significantly reinforced in the claimant's case by the particular risks which are evidenced by his previous offending history.” at [38]*

Although the claimant argued how the licence had interfered with several aspects of his everyday life whilst the social services were unwilling in facilitating contact with his family, the court does not accept that the additional conditions represent a ‘blanket ban’. Dove MJ explains that the restrictions imposed can be relaxed if the risks presented can be properly controlled, and exceptions can be made upon periodical review by appropriate regulators. He

further states that despite the mistrust that the claimant might have encountered from social services,

*“firstly it is an inevitable part of the legal processes which are properly engaged in circumstances of this sort that social services will be involved in evaluating and assessing the suitability of any form of contact between the claimant and his grandchildren whether now or in the future. Secondly, it is one of the functions of proceedings in the Family Court to evaluate and assess the merits of the advice provided by social services in respect of the issues pertaining to whether or not it is appropriate for some form of contact to occur.”* at [41]

The court essentially accepts here that supervision may in certain instances be ‘intrusive’ in the interests of rehabilitation and victim protection. It continues to state that the conditions in relation to the use of a camera, mobile phone and the internet are not disproportionate because these represent means by which his previous offences were facilitated or could not have been otherwise committed. Thereby the court sees that controlling the ownership and access of the offender to elements central to his previous offences is ‘directly linked’ to the risk of reoffending.

### Observations

The case does make important points in relation to the potential impact on probation officers attitudes towards public and individual interests, especially when other social services and associated policies are involved. The reference made to the Family Court in an otherwise criminal justice setting is telling of the social dimensions of probation cases that raise Article 8 issues. Practitioners

are not new to the involvement of children services or social workers when managing offenders in the community. MAPPA is not unfamiliar with sexual offences against children and domestic violence cases either, especially at levels 2 and 3. The acknowledgement expressed in the current case that certain decisions are best placed when made by the Family Court, confirms the multi-agency, multidimensional approach needed for a comprehensive management and reintegration of the individual. The thesis indeed examined in previous sections how the probation officers are steadily abandoning their social and 'befriending' role and moving towards more impersonal and managerialist assessment and management of offenders. Here, however, it is reminded that MAPPA cases may involve children, individuals with disabilities or mental health conditions, and circumstances that require close engagement with getting to know the individual and their needs.

It is suggested that the nature of management and supervision of offenders is such that practitioners' expectations may extend beyond the criminal justice setting. Probation officers' familiarisation with cases of the family courts, or certain decisions in regard to what is in the best interests of the child, may potentially facilitate the process of reinstating their social role and, by extension, establishing a more humanist, rights-based probation. Even in cases where the combination of consideration of the human rights of the individual alongside the interests of the child may lead to strict conditions placed on the former due to the paramount importance that must be placed on safeguarding the latter, the process remains accountable to both sets of interests. This juxtaposition yet again confirms that human rights considerations are not about leniency or being 'soft' on offending (Gelsthorpe, 2007); the focus of a rights-culture in probation

remains parallel to a balance between crime control and due process that can maintain the transparency and reintegrative ethos of the service.

However, the case may also be misconstrued as allowing the probation officers to impose restrictions and additional conditions on licences solely on the basis of previous offences of the individual. Earlier observations in relation to penal populism and punitive attitudes have shown how practitioners have been keen on imposing arbitrary measures in the interests of expediency, public protection and hushing of popular criticisms. PSI 12/2015, however, in the present case, does appear to provide for proportionality, reintegration of the offender and victim protection, whilst maintaining a focus on public protection through reduction of re-offending. Previous offences and the offending career of ex-offenders remains directly relevant, but it is only one of the factors to be taken into account when RMP are drawn. As the present case demonstrates, a fixation on previous offending can only lead to more cases being brought against the Probation Service based on the lawfulness of the measures if these continue to appear unnecessary or arbitrary.

Although offending careers can indeed provide indication as to the ways in which the risk of re-offending can be minimised or controlled, their reliability in the long-term remains questionable. As the present case demonstrates, the claimant had managed to commit the relevant offences without the use of a camera; restricting his access to one does not guarantee minimising the risk of reoffending. What it does though is to interfere with the individual's rights to private property and thus create potential grounds upon which their licence may have to be revisited or amended. This in turn not only proves detrimental to the

service and the practitioners themselves in terms of increasing an already heavy caseload with the burden of the litigation process. It also manages to interfere with the rights of the individual by the imposition of conditions disproportionate to the prescribed legitimate aims and without any significant impact on the management of the risk.

This case also provides a good reminder that not all human rights claims will come under Article 8 as it involves also ECHR Article 1 of Protocol 1 that relates to peaceful enjoyment of possessions. It is reminded how MAPPA Guidance 2012 makes exclusive reference to Article 8 and limited examination of proportionality which makes cases like the present all the more useful for probation officers to be aware. In addition to this, it is also worthy to observe how Dove MJ in his addressing of the human rights issues and specifically proportionality, he engages in a close discussion of specific events and circumstances of the individual and repeatedly reminds that

*“The important issue is the particular circumstances of this claimant's case and the particular facts of his previous offending. The claimant's record and the particular circumstances of his offences give rise to a significant and inevitable concern about recidivism”* [38]

This reiterates how becoming familiar with human rights cases is not about probation officers categorising facts and applying the same rights protections and safeguards to similar cases they manage. On the contrary this familiarity is intended to support a more bespoke offender management which can respond to the specific needs of the individual. The same observation then about



emphasis on 'particular circumstances' echoes the importance of a meaningful relationship between offenders and practitioners which can actually bring the latter in closer proximity to these circumstances, knowledge of which may evidently determine the extent of compliance with human rights expectations. The case thereby becomes not only a useful tool for practitioners in further developing their understanding of proportionality, but it also provides a vital contribution to the area by underlying the interdependency between working relationships and the preservation of a rights culture in probation.

Finally, the case makes notable contributions to the area and answers the research questions regarding factors affecting attitudes of probation officers and human rights compliance in three ways. Firstly, the observation as to how eradication of risk is not possible and that human rights are not about leniency or being 'soft' on the offender provide recognition of the existence of these long-standing misconceptions and misplaced public expectations in offender management which the literature review has shown lead to defensive decisions and notions of 'deserving' and 'undeserving'. Secondly, the court's explanation that measures imposed in perpetuity may be considered arbitrary and thus unlawfully interfering with qualified rights becomes an essential guidance for MAPPA practitioners who work with offenders that are most vulnerable to restrictive measures imposed on them. Thirdly, the link the court draws between the emphasis placed on understanding the particular circumstances of offenders and compliance with human rights duties confirms the arguments raised in the literature review relating to relationships and knowing the individual, and highlights the centrality of this factor in the formation of professional attitudes towards balancing rights and risk.

## **DATA ANALYSIS 2** – Interviews

It is noted that in the interests of confidentiality and anonymity, the real names of the participants have been replaced by the names of the nine Muses found in Greek mythology, and therefore the pronoun 'she' is used irrespective of whether the words quoted or paraphrased come from a male or female participant.

### **1) Human Rights and Risk**

#### a) Human Rights – understanding, training and priority

This part of the theme is concerned with how probation officers understand the notion, application, and meaning of human rights as well as its place within the Probation Service and the wider risk management context. Also, the researcher inquired at this point whether there have been any training opportunities on human rights throughout the participants' experience. This section is further interested in the priority level that practitioners appear to assign to human rights considerations when managing offenders and drawing risk management plans.

Half of them appear to understand the concept in a rather generic, non-specific manner of "*being fair to the offender*" while the rest may appear more aware of the broader need for a sense of proportionality in their decisions. This was accompanied by lack of actual reference to or awareness of the relevant legislation i.e. HRA, ECHR, with those being mentioned as "European legislation" or "EU document" in very limited occasions. There was though clear

reference and knowledge of a right to family life and the implications of it when child safeguarding issues arise, and how the protection of the child in the relevant cases remains at all times a paramount consideration. It is noted though that this was still not expressed in the sense of Article 8 rights to private and family life or with reference to the qualified nature of that right or what that entails.

Clio provides a noteworthy approach to human rights that exhibits signs of the influence and decisive role of risk in MAPPA. She initially acknowledges that in the course of the relevant panel meetings there is reference to human rights which, nevertheless, does not appear to receive enough attention to raise discussion on the topic among the agencies;

*“at the beginning of every MAPPA level 2 and 3 hearing there is a statement made by the chair before every case and the human rights, I think it is the (pause) the European Human Rights Convention, is it or?”*

The evident hesitation in her observation confirms the fleeting attitude of MAPPA towards human rights and the impact on the importance level the practitioners attach to the associated legal framework as a result. Clio continues to interestingly explain that from her point of view, while she does share the opinion of human rights as fairness, *“it is really about broadly speaking being risk-aware rather than risk-averse, taking into account all factors”*. This attitude does bring together human rights and risk and appears to exhibit both merits and concerns. Although risk-aversion constitutes a reality of contemporary probation which the literature review has also linked to alienation and penal

populism, it becomes debatable whether the sole basis of human rights in probation is to replace risk-aversion with risk-awareness. In the first instance, human rights may indeed provide a more inclusive avenue to transparent offender management which bears the potential to defeat risk-averse, punitive attitudes and establish a more due-process framework. It becomes concerning though to define human rights in terms of risk or assign to the notion of human rights a risk-based definition. It follows that despite the notable appreciation of human rights' potential to counteract risk-averse attitudes and lead to more holistic assessments, the duties established in the ECHR and HRA go beyond risk awareness, and towards proportionality, necessity, legality and accountability.

Another misinterpretation raised in the responses was that of human rights as a type of 'equal opportunities', and the assumption that completion of the relevant forms by individuals following their induction operates as a human rights protection mechanism. Euterpe has even explicitly stated that it was not until the time of the interview and reading through the research summary that she has been made aware of the existence of the aforementioned legislative instruments, or even started thinking about the true relevance and essence of human rights in her work;

*"Until you gave me your question as to what your research is about I'd look at human rights based on equal opportunities and looking at racism, discriminatory behaviour, and how oppression would actually work with individuals, but not in terms of the actual Human Rights Act; and it was only when you highlighted it and I was thinking but we have no training for this, or maybe it's not specific*

*training that actually identifies human rights so, we tend to be risk-focused and I suppose it's only when someone would actually say 'you are breaching my human rights because I have a right to private life' that it kind of triggers any kind of thought because it's purely based on risk"*

The confession above does capture core elements of the thesis' enquiry: extent of human rights awareness and training, impact of risk and how a restructuring based on human rights compliance can reduce complaints and litigation against the service. Participants appear to agree that this lack of human rights awareness is due to in the first instance the disproportionate and overarching focus on risk, and then the fact that human rights only become an issue when the individual raises associated concerns as to their management.

The majority of participants have appreciated in the course of the interview the balancing effect of applying human rights in decisions about license conditions and risk assessment, but also mention that other aspects, like multi-agency working and finding themselves in situations of balancing competing interests, public protection cannot but remain their main priority. In other accounts of this realisation where the participant has shown awareness of the existence of the relevant legal documents, they feel that even though there may be a plethora of policy and other guidance documents they are asked to periodically review, especially in regard to developments in risk assessment, human rights is not an area that receives attention. Melpomene who has been qualified for over 20 years and has an academic background in social work, admits that

*“the term human rights doesn’t stand out in practice at all ... feels like giving lip-service because it has to be covered so to speak ... my own personal knowledge of the Human Rights Act is sketchy ... I’m not familiar with the separate Articles ... it’s almost like a side thing.”*

The PO above went on to explain that she sees the same attitude of ‘lip-service’ in the relevant MAPPA meetings and cannot recall any case where human rights were discussed in panel as a contentious or central issue. She believes that this attitude in the MAPPA panel is another reason that contributes to her ‘sketchy’ knowledge of human rights. There does not appear to be as far as the above participant is concerned and can recall much emphasis placed by the service in general on human rights considerations. What is more concerning is how she admits her impression and experience have been such that the same unawareness and limited knowledge is seen across all probation staff and colleagues. Despite that, there still seems to be, according to the same account above, an expectation among senior staff and panel members that such rights balances or imbalances will have already been addressed by the probation officer by the time the panel meets. She goes on to say that she has found this attitude quite misplaced given the otherwise alleged collaborative and multi-agency ethos of MAPPA and the lack of required attention given to human rights by the service as a whole. As a result, this participant has also expressed how the current opportunity and interview have made her to start looking into this in a more structured way, and states how this research *“is prompting me to give it more thought”*.

A quarter of the views as to the understanding of human rights have been expressed in terms of discrimination and how implementing human rights means not discriminating against the offender because of their offence. Where this was expressed, the participants found it difficult to refer to any relevant guidance material that supports this attitude, but instead explained that being a probation officer comes with an 'unwritten expectation' that individuals under their supervision will be treated fairly and respectfully. Terpsichore's approach, who has also been qualified for over twenty years and has an academic background in sociology, is based on

*"not discriminating against them because of the offence ... in terms of policies it's difficult for me to pinpoint (pause) it's kind of giving them access to everything that you would give anybody else ... [being able to make that] divide between behaviour and person."*

Although this appears as a valid observation and an attitude that would allow the practitioner to focus on the individual rather than the offence alone, it does not strictly relate to the legislative human rights implementation. It is noted here that, the right in relation to protection from discrimination (Article 14) does not operate in such isolated way i.e. for an interference with the protection from discrimination to be established there has to be in the first instance a violation of another Convention right, and then evidence that that violation was the result of discrimination against the person based on 'sex, race, colour, language, religion ... or other status' – the ECHR and the HRA do not provide a blanket protection from discrimination but rather protect the person from discrimination

in the enjoyment of their Convention rights (*R(L and Others) v Manchester CC and another case* [2001])).

The minority of participants who have shown an attitude more in line with the relevant legislation have given views that focus on proportionality and provision of reasons for any restrictions or other measures they put in place. An example that was given here is in relation to sharing of information, and how when there is need to share information without consent to prevent crime or significant harm, that will be explained to the offender upon induction. Firstly, this reminds of the increasing number of cases brought to court on the grounds of unnecessary disclosures of information examined in this thesis, but it also resembles the wording of qualified Convention rights regarding the legitimate interests that may justify an interference. However, it is questionable whether that approach is followed based on a knowledge of operation of the human rights law, or rather an own 'commonsensical' professional understanding. Indeed, Polyhymnia with less than five years since qualification and an academic background in criminology, did not explicitly explain the decision-making process in legal terms but, she did make use of words associated with human rights;

*"looking at absolutely everything being proportionate and necessary so all of our risk management aspects, all of the license conditions they have to be proportionate and there has to be a reason why we are stopping someone from doing something."*



Despite the relatively apparent acknowledgment of proportionality in the majority of responses, it is worth noting at this point that none of the participants made reference to the concept from the perspective of the MAPPA Guidance 2012. The participants did not appear aware of the existence of human rights references in the guide or relevant Circulars that followed the introduction of the HRA. The literature review has examined these references found in the 2012 guide which, although very limited, they at least acknowledge the existence of HRA and its basic principles. This again confirms the limited attention that rights considerations receive: It is not that the participants are unaware of the existence of the MAPPA Guidance 2012 altogether since some sporadic, fleeting reference to it in relation to other aspects of the service was made; indeed, Euterpe referred to it as “this is my Bible!”. It is rather that they appear unaware of the references the guide makes to HRA, necessity, proportionality and legality because these seem to be lost in the sheer volume of risk-related information that the guide includes.

More in relation to the 2012 guide, none of the participants made any reference to the HRA Validation stage which the minutes structure includes either. The assumption here is that in the experience of this study’s participants that stage never happens or happens rarely, or it does happen but is not given any attention. This was difficult to ascertain in the actual interviews because the participants did not exhibit any indication of awareness of the validation stage so that some discussion of it could be sustained. It is noted though that this did not come as a surprise in the course of the interview: given that almost all of the participants did not exhibit familiarity with the HRA, it would be rather contradictory to subsequently expect awareness of the HRA validation stage of

MAPPP; in other words, had they been aware of the specifics of the HRA validation from MAPPA meetings they should have in theory been familiar with the HRA itself too. What may be the case though in certain instances is that the stage does take place but not in any elaborate fashion to generate discussion among the agencies. This is because a third of the participants used the phrase 'it's mentioned' when asked about human rights but could not recall when or where.

The observations above regarding the 2012 Guidance identify another aspect of the construction of attitudes that the thesis advocates. The document exhibits a risk-focused attitude which has evidently operated at the expense of human rights: it is thereby natural that practitioners using that document in their everyday practice will inadvertently follow, adopt, and exhibit a similar attitude too because this is the one that the framework imposes on them.

Another level of balancing expressed here was that they tend to put restrictive measures in place not only when there is risk of harm, but also potential that the offender might through their conduct infringe someone else's rights. Although there does not appear to be a clear, exclusive understanding on the part of the participants as to how the offender would infringe someone else's rights, there seems to be an assumption that the offender causing harm to the public comes with an underlying interference with their rights too. An example given here was in relation to co-defendants who are relatives whereby Polyhymnia continues to explain that in such cases they are aware of the need to respect their rights to family and allow contact and communication but, statistically there is high probability of reoffending with the same people. She notes that there is a link

between contact with co-defendants and risk of reoffending and believes it is rather common practice that they would separate co-defendants. However, they would also look into whether they can manage the risk in any other way so that their right to family life can be respected. In the case of domestic violence, whether child or partner, the initial approach appears to be that the offender would not upon their release return to the family home where there are indicators that that would increase the risk of harm, and they would thus rather proceed with supervised contact;

*“we tend not to support return to a family on release, what we tend to do is if they are high risk we put them in a hostel (AP) so they can complete some work, spend some time supervised with the child if there is a child there or just spend time with the partner not in a domestic setting so out and about where there’s not the pressures or the fear for the victim that if the person gets angry [...] they are much less likely to be at that level of risk as there are normally people there that would intervene.” (Polyhymnia)*

There is essentially a ‘trial period’ through which reassessment of the situation and level of risk is being done and during which the offender needs to exhibit responsibility, engagement, and commitment to their rehabilitation plan before more trusting options can be allowed. The purpose is to not remain on the basis and direction of the assessment made on release but rather adopt a more dynamic approach whereby the individual is continually reassessed in the interests of making decisions that reflect their most current situation.

A different view expressed in three of the responses is the understanding of the notion of rights as needs. This has come forward in various ways some of which could potentially establish links with the human rights legislation as discussed in the literature review. However, responses with references to needs as rights have also focused on the need of offenders not to be discriminated in any way, shape or form but not in the legal sense of the right as described above. An aspect of needs that has not been prominently discussed in the literature, but the participants have made reference to, is that of representation. Although this will be discussed further later where the focus shifts on MAPPA per se, there appears to be an understanding and expectation that the offender will participate and make their voice heard in the MAPPA process. Urania coming from a social sciences background and who has been working with Probation both in prisons and the community for over 15 years and under MAPPA since qualification finds that

*“with my MAPPA cases in particular it’s about advising them that they can actually have a role in the MAPPA process as well ... I have to ensure that all of my cases are aware they can write down representations for MAPPA, but for me that’s the main area where I’ve had to deal with human rights it’s the right to family life that’s the one that keeps coming up for all of my cases”*

This is important as it identifies a new level of rights considerations in relation to the right to representation. Although this is not a Convention right and as such not one that can be analysed based on the existing legal framework, or indeed as a ‘human’ right, the notion of representation and participation in the CJP may still be relevant and potentially be expressed in terms of offender rights. The

argument goes making representations to the MAPPA panel which may then be taken into consideration by the relevant agencies, provides the offender with an opportunity to bring to the attention of the panel any needs they might have; the same goes for any rights-relevant areas they might be concerned with as a result of induction appointments or newly-imposed license conditions. This not only provides an avenue of opportunity for the offender to communicate their views and requests and evidence their engagement with the reintegration process. It may also provide a way to compensate for the wider unawareness in relation to human rights considerations by bringing those issues to the attention of the panel. This may in turn also prove beneficial in diverting potential cases away from the courts and ensuring due process.

There may, nevertheless, be possible challenges to this more active, participatory role, such as lack of interest in and understanding of MAPPA on the part of the individual, which act as barriers in establishing those essential communication channels. On a similar note, it is worth noting the argument as to how this more engaging role may be placing a responsibility and an expectation on the individual that necessitates an additional level of support to be provided by the practitioners. The role of a working relationship here becomes even more crucial as the probation officer would need to incorporate in their supervision strategies assisting the individual, in the first instance, understand the process of making representations and then, appreciating the impact this may have on the outcome of MAPPA and their rehabilitation. It follows that the opportunity of making representations provides yet another reason and demonstration of the need for the two entities to work constructively

but also, requires close consideration of the expectations created within the context of an already turbulent relationship.

Another attitude that has come forward is how probation officers may find themselves acting as 'rights advocates' in instances where they have to defend the needs of offenders to other MAPPA agencies or even their managers. This may act as yet another barrier in considering human rights in panel where other risk considerations may take priority;

*"it's quite difficult because whilst I'm trying to take onboard everything that they want and I'm trying to put their case forward to my managers because ultimately I'd have to go through that process of explaining justifying and defending every decision I make to higher managers it's not always possible for them to get exactly what they want"* (Urania)

It is also worth noting the reference to 'justifying and defending' which again confirms their preoccupation with making defensible and defensive decisions. On the one hand, the meaning of these decisions as examined in the literature review presents them as a protective mechanism against criticisms in cases of serious further offences. In the above instance, however, another dimension of these decisions is observed whereby they also involve a process of 'taking onboard', as far as possible, everything the individual wants. In this sense, the participant here appears to assign to human rights a novel meaning, namely 'what they want'. This may potentially be questioned in the narrower sense that it does not strictly coincide with the legal approach of the ECHR, and that it may involve a wide, indeterminate range of expectations on the part of the individual.

In a rather broader sense though this becomes problematic to the human rights discourse and culture which have not been about 'what one wants' but rather, the collective benefit that comes with respect, protection and observance of human rights based on balance and proportionality.

Equally interesting above is the role of managers presented as a sort of arbitrator. Although this study is not focusing on decision-making at that level of the hierarchy<sup>8</sup>, it is worth mentioning that the pressures on MAPPA probation officers do not only originate from 'external' public or media scrutiny, but also their own managers within the service. It is thereby apt to add to the balancing equation and the formation of attitudes, the impact of reporting to senior staff and line managers which places yet another limit on human rights considerations. It is contended that if the understanding and attitude towards balancing human rights and public protection is not shared between probation officers and their managers there is greater probability that tensions may arise, and that the former may, in their effort to please their superiors and avoid conflicts, appear more punitive towards the individual or, not provide them with 'exactly what they want'. What may prove even more concerning in this interaction is the eventual impact it exerts on the relationship between the probation officer and the individual: the 'not getting what they want' is translated by the individual into indifference, unworthiness, and prejudice towards their interests, whilst the practitioner may find it increasingly challenging to regain their trust.

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<sup>8</sup> The factor of hierarchy and managerial attitudes is further discussed in the recommendations chapter of the thesis.

In regard to specific Convention rights, all participants make reference to the right to family life but only two of them have referred to it along with privacy, and none to home and correspondence, which is the way expressed in Article 8. It appears that this familiarity with that part of Article 8 is due to how frequent issues around partner and child contact arise in the participants' caseload. On the one hand, there does not seem to be a comprehensive understanding and application of the right based on its qualified nature but rather a street-level<sup>9</sup> approach which may 'accidentally' align with the Convention definition or, only bring issues to the attention of the practitioner where the individual actually complains. On the other, and although the question and theme of victims will be examined later, there is a relevant view expressed in relation to criminal families and the need for probation officers to insulate the offender from criminogenic opportunities. This comes from Calliope who joined the service just over 5 years ago as a criminology graduate and has been working with MAPPA ever since;

*“there are times where we make decisions very much on the focus of protecting victims and that can breach on the freedom [of offenders] so that can include [...] cases where their family is also involved in crime and we can place license conditions or curfews or exclusion zones that can actually prevent them from going to places where their family are so it actually restricts them from having that family life at times”*

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<sup>9</sup> The role of probation officers as street-level bureaucrats in the human rights context is further discussed later and in the recommendations chapter of the thesis.



This raises a contentious issue in regard to the right to family life. There appears to be an argument that has not been seen in the literature as to how the individual circumstances may be such that the probation officer finds themselves in a situation where meeting certain offender needs in the interest of human rights, such as contact with family, may actually be at the expense of the individual's rehabilitation. This provides a novel attitude as it might in essence create yet another level of balancing expectations which is not necessarily concerned with public protection per se, but rather balancing the competing interests and needs of the offender alone. The instance in question confirms the complexity of the balancing exercise with which the practitioners are invited to engage. The more established position may have so far been that interferences of the right to family life are due to the individual put under restrictions to limit contact with their children or partner, or imposition of exclusion zones where their family lives in the interests of minimising the risk of harm. The criminal family situation is essentially a reversion of the above position as it is the family that quite paradoxically pose a risk of 'harm' to the individual in the sense that it may increase the latter's risk of reoffending. It would indeed be counterproductive to categorise or quantify the challenges this creates for balancing family life, risk(s), and public protection as the realisation above, if anything, underlines the need for a close case-by-case, bespoke approach to offender management in balancing competing interests.

The same realisation also confirms not only the complexity of the said balancing exercise but also the complexity of the relationship the thesis has been closely observing. The criminal families example creates an additional source of potential conflict in the offender-practitioner relationship since the latter are in a

situation where they need to be transparent and explain to the individual how it is 'in their interest' that their contact with their own family is going to be restricted. It becomes questionable how different individuals may receive this news especially where this would mean finding alternative accommodation and making new financial arrangements. As in the case of representations earlier and 'not getting what they want', the criminal family situation again reveals the many levels of rights-balancing involved in the supervision process that go way beyond public protection considerations, and confirms the sensitivity of the aforementioned relationship if no due caution and attention to its foundations is paid.

In regard to training on human rights legislation and practice received throughout their experience with the service, the response has been the same across the sample with all participants stating that they cannot recall any specific training on human rights or any other type of training of which human rights constituted a part. As the responses here came with a close-ended element, the participants were still asked to elaborate as much as possible on any training that could potentially relate to human rights so that the discussion captures any aspects that could even remotely contribute to their human rights understanding and formulation of ensuing attitudes. A third of the sample mention that there may have been some references to rights in certain training instances but that would probably be rather historical to the point where the participant cannot be in a position to recall any specific instructions or discussion;

*“(long pause) I think there was one period many, many moons ago that related to human rights, but I think also during my training we touched on or, well some reading that was part of my degree where I looked at human rights and I guess for my own development as it were I touched on it; don’t think necessarily specifically touching human rights has necessarily come out in much of the training, not in a structured way; it’s mentioned but I can’t recall [...] maybe once and that’s very loosely and if you ask me when I can’t remember” (Thalia)*

There was reference to training in relation to the Equality Act 2010 and Care Act 2014 but not the HRA, or any other human rights legislation. Most of the participants explain that there is lack of such training because of the fixation on risk and reoffending which dictate most of what they do and by extension the focus of the training in which they are asked to participate. A noteworthy observation here which may not be in line with human rights in the strict sense is where the participant can recall no human rights training but feel that the ‘diversity’ training they have taken may prove informative in the broader sense of rights. The relevant training normally involves learning to appreciate that difference is normal and to be respected;

*“different equals someone else’s right to be who they are and within that difference it’s about catering for those needs so that difference may involve something that you are not familiar with something that you may not necessarily like but it is important because that difference is about that person and so therefore it’s working with their difference” (Terpsichore)*

Although diversity and discrimination in the sense expressed above does not strictly follow the ECHR or the HRA, it is contended that in the interests of flexible, inclusive and deductive analysis it may be worth considering difference as a rights consideration in the broader sense. It appears that the above understanding suggests that even though diversity may not in the legal sense be a right in its own right, it may be relevant to consider the implications of that difference in individual cases to avoid potential human rights violations in relation to other areas. As will become apparent later in the Risk and Relationships themes, characteristics of the offender like race, ethnicity, religion or language, may prove informative or even determinant in offender management and rehabilitation decisions. These may be in connection with location of AP, facilities in the area where accommodation for the offender is provided or opportunities to practice their religion while under supervision so that, for example, the cultural needs of the individual are met. This in turn may reintegrate the offender to their communities in a more rights-informed and productive manner and thereby further assist with their rehabilitation.

Other training opportunities that the participants have found relevant or broadly informative in terms of rights is that on oral hearings and more specifically recalls. The instruction when recall is considered is that it should come as the last resort, and that other options have been identified and considered but there is still a serious issue to justify the recall. As this is always highlighted in the relevant training, Erato who has been with the service for nearly 30 years after completing a social sciences degree, thinks that that direction prompts an almost inadvertent consideration of rights and, more specifically, the right to liberty as that would be at stake in a recall scenario. The right to liberty and

security as expressed in Article 5 of the ECHR is indeed a limited right which can be interfered with upon certain circumstances which can include a lawful arrest or detention. As with the right to family life, the lack of the above language and terminology in the participants accounts and instead the provision of an explanation of the right in a 'what it says on the tin' manner shows an attitude that is informed by professional judgment, discretion and practical experience, rather than law and statute. This creates questions as to the level of discretion and power afforded to probation officers which indeed the participants in various instances have acknowledged in relation to the power to recall;

*"I don't think you can physically stop someone unless you recall them to prison but then you need indicators that the risk is returning to justify your recall to prison and recall to prison is such a huge power to have and such a huge responsibility to have because you are just plugging someone out of their life"*  
(Polyhymnia)

It is contended that following the above observation, the recall situation is one that may potentially raise human rights considerations and reveal attitudes towards balancing liberty and public protection. Scott (2002) indeed included Article 5 and the instances of curfews and recalls to prisons as situations that may potentially raise claims based on liberty. Polyhymnia's thoughts on recall show how recalls are reserved as a last resort, and that when they are employed as a product of defensive decisions or risk aversion then the resulting restriction on liberty may not be justified. The same worries expressed above remind of the extent of discretion probation officers enjoy which has been

evident both in the literature review and the case law analysis. In this instance though, it alludes to another crucial realisation, namely that MAPPA is about risk *management* and not risk elimination: “*Risk management tries to minimise bad events from occurring but nevertheless accepts that risk events cannot be eliminated altogether without unacceptable levels of restriction of liberty and other rights.*” (Gelsthorpe, 2007, p.503) In that sense, risk management is human rights-compliant and it is rather attitudes of risk elimination that put rights-balance in jeopardy (Hudson, 2001).

Other wider views expressed in regards to training that the data finds relevant to rights is the emphasis placed on various types of training, and especially that around license conditions, in that everything needs to be proportionate, necessary, open and transparent, focused on the individual, and themselves remaining accountable at all times;

*“the common theme throughout all of it is everything must be proportionate and necessary in terms of any decisions we make; it’s stressed that you have to be looking at the individual ... there has to be reason why we are doing things and I think as well we are very much told to be open and transparent so ... if you want this to change we would expect this from you so we are not just kind of saying ‘I’ve made that decision and that’s that’”* (Polyhymnia)

The above direction does represent one that brings together certain human rights tenets, such as proportionality, necessity and dignity which can support a foundation based on needs, individuality and bespoke interventions. This attitude also underlines the importance of language in the probation

environment; how the practitioner establishes those communication channels, and how the sort of language they use to communicate, defend and explain their decisions is pivotal in building rapport and cooperation. However, the way this has been expressed above is generic and speaks of aspects of the offender management process that are essentially applied irrespective of rights considerations.

Notions of proportionality or accountability and transparency do bear certain human rights connotations when put in the appropriate context, but this does not necessarily mean that a practice based on proportionality is in of itself in accordance to human rights law. It is thereby argued that that same discussion needs to exclusively take place within the remits of rights for the same tenets of proportionality, necessity and so on to receive the corresponding meaning and attention. Proportionality is indeed a contentious issue which as seen in the earlier analysis of case law and will become apparent later in the relevant section of the analysis, has received special meanings within individual cases and the human rights discourse. Training based on a blanket approach to proportionality along the lines of proportionality across the board indicates a 'one-size-fits-all' approach that may actually reproduce street-level understandings of rights and disproportionately extent the reach of discretion in the decision-making process.

Other views expressed in terms of training explain that the spectrum of practices they engage in, or have training on, are so wide that it is very difficult to make sure that those human rights aspects and duties are also included and incorporated in their training;

*“if there is an issue that we think is to do with human rights then we’d generally have to take it to our managers ... because we just don’t I certainly haven’t had all of the trainings to feel actually confident in dealing with some of those cases and it is an area that is lacking ... there’s nothing really that covers that so for me I know it is an area I lack experience and expertise” (Urania)*

Urania goes on to explain that the same situation is experienced as far as training and competency on the use of the relevant legislation and instruments i.e. HRA 1998 and ECHR 1950, are concerned;

*“I know of them, I can’t recite anything from them because the amount of policy documents probation officers get sent is ridiculous ... the only argument we get is the right to family life and generally we can work on that through other means without having to refer things like this and our offenders don’t really know what’s involved with that legislation; it tends to be they’d get a solicitor involved the solicitor quotes it and then when we get the solicitor’s letters that’s when it gets escalated”*

This first part of the interview data analysis exhibits notable statements regarding human rights understandings and provides direct contributions to the area in answering certain research questions of the thesis. It has become evident that the human rights understandings of probation officers as expressed above do not appear to be based on the HRA but rather range from fairness and lip-service to discrimination and equal opportunities. The experience of the participants has revealed that there is no human rights training in place or



guidance as to the incorporation of human rights legislation or case law in their practice. The notions of proportionality and necessity are broadly approached by the practitioners and follow similar street-level approaches in their application. These observations constitute novel findings in the area and become evidence of the need for reconsideration and reintroduction of the place of human right in MAPPA which represents the sphere of greater risk and hence greater potential of human rights violation and overreach of proportionality by imposition of strict restrictions on individuals. It follows that in relation to the present research questions the extent to which probation officers take regard of human rights is very limited or potentially negligible because the understanding of human rights and its relevance to offender management is “sketchy” to start with. It thereby cannot be said that human rights are in any way prioritised and if this seems to be the case in isolated instances then it has to be coincidental as the practitioners cannot prioritise something they are not familiar with or have had no training on at any point in their career. Remaining on the domain of the research questions, this is also because there does not appear to be knowledge of the HRA duties or implications and even more so of any relevant case law which would assist with the interpretation of the relevant duties and expectations.

b) Risk – process, tools and public protection

This part of the analysis focus on the meaning and processes of risk and risk management and the ways the notions of risk within probation appear to impact on practical, moral and professional decisions made by the practitioners. The current purpose is to rather understand the extent to which the consideration of risk determines the different decision-making processes in offender management and the degree, if at all, to which it influences the attitude and approach of practitioners towards human rights.

Although it is not the intention here to quantify the responses, it is worth noting that 'risk' is the most commonly used and referred to word in the responses of the participants. Even in the instances where the question is not necessarily about any aspect of risk or risk assessment or tools, the probation officers would almost mechanically mention a dimension or level of risk which in their opinion affects what they think about the given topic. That being said, the participants would not be asked questions about risk in a direct manner i.e. how do you understand the meaning of risk, or what is the meaning of risk in probation, as this would rather be too broad a question and would rather produce a too technical or a too vague answer. The notion of risk appears more organically in the data, and, as it will become apparent in the quotes below, the present contention is that risk of harm and reoffending are embedded in their way of thinking; where participants appear not to think of rights in their own right, the attitude is rather different when the risk is assessed and becomes one of undivided attention.

The majority of participants felt the need from the very start to express how risk is at the heart of what they do and emphasise its overriding nature in an attempt to support any kind of answer that would follow, or to provide the context within which they are expected to work and deliver their duties. At the same time though that does not mean they do not recognise how part of managing that risk involves the individual taking responsibility for their offending and working alongside their probation officer;

*“Risk with a capital ‘R’ is in all its different levels in terms of what the risks actually are, would override everything else but I think also especially with persons who have committed sexual offences it cannot be all about risk because you have to allow offenders to grow ... to manage their own risks, to be aware as opposed to restricting them completely” (Melpomene)*

This introduces a notable observation about the widespread fixation on risk considerations and may be indicative of the relationship between risk and rehabilitation. Melpomene above says, in other words, that if it was all about risk or if they allow offender management to be all about risk then offenders would not be able to grow, work on their reintegration and move past their offending. This is also saying that any restrictive measures or being on probation and license itself is in most instances intended to be a temporary measure after which the offender should be able to manage that risk without the need of supervision. It appears that an overemphasis on risk would rather restrict them completely to the extent that they would never be in a position to take ownership of their rehabilitation as the service would not have provided trusting avenues towards that level of growth in the first place. On the flipside, though,

there is the need for the offender to cooperate, engage with any programmes or requirements set in their management plans as, otherwise, they would be restricting themselves from even embarking on that rehabilitation journey.

This interrelationship between risk and the interests of the offender found within the practitioners' attitude to risk becomes more elaborate when measures taken strictly on the basis of risk would disproportionately interfere with offender rights. Melpomene also provides an example on the point where the individual got into an argument with a member of the public due to the former being drunk which made the probation officer start thinking of recalling them. She then thought that would be a disproportionate response in the circumstances, and that close monitoring in an AP and curfew would be more appropriate. Nevertheless, based on her explanation, this consideration of a potentially unlawful interference with the offender's right to liberty is not what constituted the basis of the decision;

*"you don't think in terms of liberty, you think in terms of rehabilitation, for me it wasn't so much about liberty it was the fact that ... this man has worked so hard to get himself this far, get his release, liberty is not the first thing that pops in to your head, it's about risk, has the risk changed; those are the sort of conversations in your head as opposed to liberty"* (Melpomene)

This inquiry into the practitioner's mind exemplifies how they are almost 'engineered' to think in terms of risk. At the same time though it also appears to be about what the offender has done so far, how much they have put into their rehabilitation and as seen earlier what the current state of things is in regard to

the reality of the risk they pose. In further appreciating this attitude, it is also noteworthy how 'you don't think in terms of liberty (or human rights) but in terms of rehabilitation' as if the two are two entirely different and unrelated to one another concepts. This starkly digress from observations established in case law which actually supports that there is a correlation between human rights and the social rehabilitation of individuals. It thereby appears that the emphasis on risk has an impact on the attitudes of practitioners in a way that does not allow room for consideration of other, more 'unconventional' interests. The same impact may go as far as to cultivate an attitude where interests such as offenders rights and rehabilitation are placed in opposite ends in the practitioners' deliberations, when in fact the literature review suggests that the two can operate in synergy and be on a parallel path to public protection too. What is notable though is the reference to how 'this man has worked so hard to get himself this far' and the probation officer getting to know that. This echoes the centrality of that constructive relationship between practitioners and the individuals they supervise in making decision that represent and respond to the latter's needs, efforts and circumstances. What this attitude lacks is the appreciation of the underlying link among rehabilitation, working relationships and human rights in constructing a more productive contextualisation of risk. Even at this relatively early stage of the analysis, it can be seen how testing a change of mindset and culture within probation would be, namely from one of risk aversion and utility to a culture of rights.

Further enquiry into the participants' approach to questions of risk has revealed that there is a relationship of 'give and take' in regard to their management plan, and that the offender is expected to keep the monitoring of their risk alive during

and after the end of the probation period. They express this very idea of moving towards a state of 'self-monitoring' and proactive motivation to minimise the risk, and there was reference by Terpsichore to even encouraging offenders to keep a risk diary. What that diary could potentially encourage them to do is start making records of when they have emotions of anger and consider the skills they have applied to deal with that anger; the positive or negative reflection that has taken place afterwards, and then write down what that positive was about so as to focus on that in the future, as well as the changes they have done to deal with the negatives. Such initiatives not only actively show a recognition on the part of the individual of their risk and the need to work on that in a structured way. It also evidences their intention to engage with the service, commitment to develop skills that they can use in managing their risk post-probation supervision, and, at the same time, an understanding of the benefits this approach may have in the long-term especially in those cases where improvement and signs of rehabilitation translate into 'accomplishments', such as return to the family home, contact with their children, or withdrawal of curfews;

*"so that they are actively self-monitoring themselves ... but also keep it live, this is a work in progress it's not that I've done a programme that's it I'm well now and relapse happens because you take your eye off the ball because you become passive... if you care that much for your children's wellbeing and if what you say it's true then part of being responsible is doing what you have to do to keep them safe in the future"* (Terpsichore)

The above statement reveals a pivotal attitude for the purposes of the thesis that appears to be based on the individual's signs of care, initiative and responsibility. The notion of developing responsibility and taking ownership of the past offending behaviour are definitely not new concepts in 'being on probation', but what becomes noteworthy in the context of the participant's statement above is that there may be a role for the individual to play too in gaining respect for their human rights. The direct references to 'children's wellbeing' and 'keep them safe in the future' whilst alluding to family life-related remarks, imply that in ensuring protection of their rights, the individual has to evidence that engagement with their management plan and remain committed to the skills developed so that they can enjoy their 'rights benefits' in the long term. Interestingly and in contrast to previous remarks where rehabilitation and liberty were seen as separate to one another eventualities, this attitude above unwittingly confirms how closely linked rehabilitation and human rights are.

Clio also adopts and applies the attitude of 'give and take' in her management of the individual in a manner that reveals an additional human rights dimension in license conditions that include curfews;

*"I'd say to them 'I'll make a bargain, I'll make a deal with you: you don't provide any positive drug tests and I'll reduce your curfew as we go along'. If they keep providing positive drug tests I say to them then the curfew remains and it is about fairness, and that's because they have the potential to do serious harm to people so that's how I see it; I don't feel in that situation I'm affecting the human rights, I see it more as being fair rather than thinking about human rights"*

Apart from serving as a reminder of her understanding of human rights as a fairness mechanism, Clio's bargaining approach firstly appreciates the potential of curfews to unlawfully interfere with human rights, and more specifically the 'freedom' of the individual. Although this is again not expressed in the wording of the ECHR and Article 5 Right to Liberty and Security, it highlights her self-assertive position that the use of bargains is human rights-compliant and achieves a balance in expectations and responsibilities. Clio also finds that in doing bargains she treats the individual with respect, and that the individuals are responsive to this attitude and appear more willing to cooperate when clarification of consequences and transparency exists between them. Her contention thereby confirms that the more elements of 'rights balance' MAPPA incorporates, the more transparent the framework appears to the individual and the more interactive and promising the reintegration process becomes.

Following on from that realisation, another important consideration in the attitudes employed toward risk is remaining realistic both in the various stages of the risk assessment process as well as in what they expect the individual to do as part of risk management. The majority of the participants explain that individuals may indeed want to engage and address their offending, in which case what the former wants to absolutely avoid is the situation where the latter keeps making efforts and shows evidence of improvement on various levels but, the probation officer still says "*not good enough, not good enough*". There is thereby a need to remain "*realistic*" in what they ask them to do and what the expectations are in each case. It is also equally important to consider, Polyhymnia says, that even though they may have done programmes in custody and have started engaging with Probation pre-release, it is not until



they find themselves back in the community that they actually test those skills developed in order for that screening period to actually take place. Part of that realistic approach is that they would not make any drastic changes before release, and then, use those 6-12 months post-release as the real 'testing' period and thus give an opportunity to the individual to show their commitment to rehabilitation and their communities. It was further mentioned that reassessment would take place in instances where there has been a change of address or relationship, further offence, completion of a programme in the community, again all in the interests of reflecting on the current situation, and give the individual another opportunity to evidence how they have been addressing the risk.

It is also relevant to consider the relationship between risk and transparency, and how doing a realistic risk assessment is about recognising and appreciating the existence of individual needs. Responses on the practicalities of risk have explained that the more shared the expectations and responsibilities between offenders and practitioners in the management process are, and the more accountable their decisions and the measures taken about monitoring the risk are, the more bespoke and respectful to the individual their interventions appear to be as well;

*"we are asking them and expect to be open and just be very real with us that we need to do it in return. I think it's real double standards to expect them to behave in a certain way then us not taking into account and take on board with us what they are saying; I think if we do not recognise the individual traits we can't do a realistic risk assessment ... if we sit there and say do all this risk work*

*but it's all focused on people of this IQ and you've got this IQ but we are going to continue saying you are risky because you are not completing the work, then we are not providing a good service, we are not doing accurate risk assessments" (Polyhymnia)*

There is thus an additional level of expectations where the type and extent of 'riskiness' they assign to the individual is not such that it could in any way disproportionately affect their ability to evidence their improvement by the practitioners setting for them unattainable goals. Added to that, the majority of participants have underlined how the risk assessment process may skew their judgment or cause them to think in a certain technical and actuarial way, and thus losing sight of other important aspects in the individual's background and origin of offending behaviour. This necessitates that the voice of the offender is incorporated in risk management so that the process does not become an exercise of discretion in which the individual simply has to follow whatever interventions the scoring they have received corresponds to;

*"I think sometimes with probation you can be seen very much as the authority and they are very much the one in the wrong and you want them to feel like it's a safe environment where they can actually say if they feel like they've been treated unfairly because a lot of the times if you trace it back you can get a lot of people that at school they were told you are disruptive, you are naughty there's something wrong with you, you're misbehaving and they're told that over and over again at last they get angry and you can trace back a lot of their offending to certain things and certain feelings so we can't be another professional body*

*that does that as well so, we need to be working with them and recognising any individual needs"* (Polyhymnia)

This same statement becomes particularly informative to the thesis in three further aspects that develop the understanding of professional attitudes towards the balancing exercise between risk and rights: the place of probation in the criminal justice journey, the meaning of fairness, and the centrality of maintaining close, working relationships. Firstly, it remains true that, except in the instances of pre-sentence reports, in the case of most individuals, their first contact with Probation is at the end of that criminal justice journey which means they have already had contact with police, the courts and in certain instances prisons as well. The individual has thereby already formed an opinion of the typical criminal justice practitioner which indeed may partly justify why the probation officers *'can be seen very much as the authority and they are very much the one in the wrong'*. It follows that this predisposition of the individual as to the stereotypical image of the probation officer they draw, makes even more challenging for the latter to re-establish trust and a rights-based communication, especially where their predecessors have not exercised a needs-orientated treatment of the individual.

Secondly, there is also an underlying understanding of human rights which other interviewees have also expressed previously in the data analysis, based on 'fairness'. What is interesting above, though, is how she recognises that in the case of Probation it should be different from other agencies or organisations, in the sense that if the individual feels they have been treated unfairly, they should feel safe to say so. Even though, as seen earlier in the

analysis, fairness alone may be too vague an understanding of human rights, it does appear vital for human rights that probation should represent an environment where the individual feels safe to discuss fair treatment because that is the environment that can cultivate a rights-culture. It is argued that in adopting that kind of environment and attitude, any potential human rights violations can be identified early on in the management process and resolved in collaboration with the individual and the MAPPA agencies.

Finally, the above observations collectively reinstate the crucial nature of the relationship between probation officer and the individual: it provides the most promising avenue to exactly defeating the 'authority' stereotype, establishing a trusting and safe supervision environment, and eventually a destination where the practitioner can appreciate those life experiences and risk factors, and thereby preventing not just reoffending, but also, human right violations.

In regard to the risk assessment tools, all participants of this study have expressed concerns with OASys and other similar tools about the challenges these present them with, such as tick-boxing, time-consuming, long-winded and repetitive which have appeared quite extensively in the literature review as well. Half of them – mostly the ones with more years of experience, believe the quality of the assessment tools is much better than it used to be in the past, but it still takes a lot of time to complete these, and the focus remains on risk rather than providing an accurate depiction of who the individual is or their needs;

*“if you’ve got a ten day target to complete what they call an initial assessment and I may have only seen that person once or twice I’m not going to complete*

*that assessment in any quality; I might do but very basic screening with the intention of redeeming it [...] I don't think that that's a true reflection of the individual"* (Euterpe)

*"a lot of what we do now, OASys I think symbolises this, is about risk [...] so, when you're reading OASys as a probation officer you are looking at what are the potential pitfalls here with this person, what do I need to look out for; what OASys doesn't do is tell you what kind of person he or she is"* (Clio)

The participants appear worried that the fixation on risk assessment and completing the relevant screenings may lead to them losing sight of the individual in a way that does not support the fostering of a working relationship with them. Also, it is contended that the assessment tools present a highly contradictory situation whereby the requirements in completing the assessments and using the relevant tools defeat the prospects of building meaningful relationships with individuals;

*"a lot of it is about recording [...] but if you keep doing that you end up in a situation where an offender walks in and says 'I've got all these problems and issues I want to discuss with you' and you have to say sorry I can't speak to you right now, I'm writing your OASys"* (Clio)

It follows that to complete an accurate, representative of the individual assessment there needs to be prior and close engagement with that person. However, the disproportionate amount of time these require to complete coupled with increased caseloads keep the practitioner desk-bound and thus

physically and professionally away from the individual. It thereby becomes questionable whether that almost remote or 'once or twice' interaction can support an assessment that includes appreciation of the totality of the needs and rights of the individual.

What seems promising though across the accounts of the interviewees is that the assessments are now more thorough in terms of understanding of triggers, protective patterns, what other agencies need to be involved with, what sentencing stage the person is at, and essentially painting a picture of where the individual is at that moment in time. The responses appear to be saying that they make practitioners more "*aware*" of all of the above given that the risk assessment and management plan are "*comprehensive*", and, as such, they act as a good streamlining exercise that can contextualise the risk involved.

Although there are certain sections that invite the assessor to consider the needs of the offender as well as any vulnerabilities which the practitioner may explore during their meetings with the offender, there is no specific section on human rights or any other section where they feel human rights considerations could be formally discussed. The same limitation was raised in case law which further confirms the need for reconsideration and restructuring of the present risk assessment processes. The risk of harm and risk management plan sections of the OASys document, the participants say, are the most prominent since there is scope there to include everything about the offender, but the focus in all instances remains on the risk;

*“OASys captures information from different sources ... when you ask someone do you have any health needs, any disabilities, do you feel this is going to affect you, you are going to record that in the OASys and it’s there and it’s there for anybody else to access to know that these issues are really important so in dealing with this person keep this in mind all the time” (Terpsichore)*

This is on the one hand a necessary input for fruitful offender management and effective reintegration plan, but on the other, in the lack of the necessary service support and resources, the literature review has revealed, it can indeed feel like a ‘laborious task’ requiring a considerable amount of time. This not only places an expectation on the assessor to be flexible and succinct and assumes a manageable workload, but also requires a level of resourcefulness with its completion;

*“I used to do it all the way through and what you find is it’s mentally-wearing, you feel kind of a little bit distressed, it’s a thinking exercise as well because you want that risk management plan in particular that if someone has not looked at anything else, when they look at that risk management plan it has all the essentials and you want to get that right” (Terpsichore)*

The main benefit the participants seem to recognise with the risk tools used remains that streamlining exercise which highlights the things they need to consider and the questions that they need to ask in the interests of a rounded risk assessment, i.e. accommodation, finances, employment, relationships, emotional wellbeing, attitude, behaviour, drug and alcohol use. All of these the probation officers find useful to have explored because by having that template,

it prompts them to ask about 'risky' concerns, and then they might actually get to know about and engage with more than just that initial factor. It thereby becomes most effective when used as a starting point in assisting with development of conversation and unpicking of the factors that go into their offending.

However, there was a particular concern in the majority of the responses as to how this overemphasis on completing that document and making sure that if another colleague or professional refers to it they can find there everything that is to know about that individual, creates an attitude whereby too much information is included, to the point that it becomes over-complicated or even unreliable;

*"you are spending more time trying to make sure you are ticking all the boxes than you are actually letting it lead you to the right risk assessment; I mean I don't think you do a bad risk assessment if you tick all the boxes but, I think you can get slightly distracted and putting in things that aren't necessarily going to inform our risk assessment because you want to get good quality assurance, and I think sometimes it doesn't allow it to be reflective of the real situation"*

(Polyhymnia)

Participants have reached similar to the above conclusions about risk tools in their accounts to indicate on the one hand, the time-consuming and demanding nature of risk tools, and on the other, how these cannot substitute for that essential one-to-one contact without which no holistic risk management can take place. Clio in commenting on the impossibility of risk assessment tools to



act as substitute for the face to face interaction agrees with Polyhymnia's note on representativeness, and succinctly adds that

*“one of the things that we've lost a bit in probation is a document, a report or something that basically says these are my views of this person, because what OASys is basically telling you is: this is how drugs are linked to his risk, alcohol is linked to his risk, emotional health and wellbeing are linked to his risk ... they're like short stories about almost different people living in a house whereas what you want is a kind of a short story about one person and who they are and what they are about and you don't get that from OASys; we're dealing with human beings ... everything's quite fractured, fragmented ... I've never really successfully reached a point since I've been in probation where I've had the right balance between recording and having quality time with the offender”*

Clio's notable observation as to how OASys almost neglects that these assessments refer to human beings is indicative of their unsuitability, in their current form, to accommodate human rights as well. The lack of reflective, contact-driven assessments and engagement with the individual offender's situation in combination with the actuarial nature of risk tools appear to have made the practitioner know less of the humanist aspects of offender management. The fragmentation of the framework may thereby not allow the probation officers to develop a holistic, balancing attitude towards human rights and risk, but rather one that is preoccupied with *“make sure you get it on paper”* (Clio). In that respect, the imbalance between 'recording' and 'quality time with the offender' she experiences is in essence another symptom and manifestation of the imbalance between risk and rights.

It thereby follows how this second part of this theme constitutes a testament of the contribution to knowledge the thesis makes in revealing that human rights and the associated balancing attitudes cannot be divorced from the impact risk exerts on them. Participants have even gone to the lengths of even defining human rights in terms of risk or outright admitting that they do not think in terms of liberty or family life per se, but rather risk and rehabilitation. It further appears that this overemphasis on risk has skewed and diluted the meaning of risk down to a bargaining exercise where rights entitlement becomes a benefit they have to earn. In these circumstances defeating the authority stereotype offenders have of probation officers and re-establish trust become increasingly challenging with negative implications for desistance and rehabilitation. In addition, there does not appear to be any human rights-specific section in risk assessment tools which would assist with incorporating human rights consideration in offender management. In relation to the thesis' research questions, the evidence show that risk is prioritised at the expense of human rights whereby the former is approached with a "capital R" approach, while the latter remains "a side thing". The responses of the participants also reveal that the lack of reference to human rights in risk tools, the absence of any training on incorporating questions of rights in risk assessment and the tick-boxy, over-complicated, non-reflective attitude of MAPPA does not and cannot ensure adequate operational compliance towards human rights. The practice and its structure rather lean towards risk-averse attitudes which directly influences the decisions of practitioners who need to respond to these expectations and in turn experience an imbalance between recording and assessment and quality time with individuals.

## **2) Relationships in Offender Management**

The interview data has led to the emergence and conceptualisation of 'relationships' within probation as a new theme. The coding process has also necessitated that the newfound Relationships theme may be best approached by separately discussing its two main constituting elements, namely the relationship between the individual and their probation officer, and the one between the probation officer and other MAPPA practitioners.

### **a) Probation Officer and Individual**

A main observation in the data is in regard to the foundation of the offender / practitioner relationship and the importance of establishing initial contact. Half of the participants have explicitly referred to the need for the service to give more attention to the individual before they are released into the community. The data reveals that in many instances the probation officer not only are they not in a position to establish that initial contact prior to release but, on the contrary, it may be months after allocation or inheritance of the case that they meet the individual. That initial contact prior to release appears essential in ensuring that the individual is later in a position to trust and discuss management plans with the practitioner. Polyhymnia believes it is important to establish contact before release because it would be quite unfair to expect the individual to answer all those questions which are completely personal, immediately after their release. She believes the fifteen days they have got after release to complete OASys is an objectively narrow time limit to produce a realistic assessment, especially where no previous contact with the individual has been made;

*that's never conducive to getting off on a good foot or establishing a good relationship [...] but if you've already established contact when they were in custody then you much more feed and ease into those questions and it doesn't feel as staged. (Polyhymnia)*

The above observation in regard to establishing contact 'when they were in custody' appears crucial in setting the foundation of that relationship and defeating any stereotypes or miscommunications which, as seen in the previous theme, may prove detrimental to understanding the needs and human rights concerns of individuals.

The literature review has further highlighted many organisational pressures in the form of workload, availability of resources and time restraints acting as a hurdle to the development of the relationship in question; but, what has not received the required consideration is how the situation appears to the individual at the beginning of and during their supervision:

*It's not the job I walked into all this years ago; I still enjoy it but I don't enjoy the added pressures that everybody seems to be facing with it, and trying to explain that to our offenders as well it's really difficult: they don't understand it because a lot of them have been through the system so many times they've had opportunities, they've had money given to them, people have helped them out, we've been able to get them bed spaces; we don't have any of that anymore. (Urania)*

Urania explains that the aforementioned pressures become even more challenging in cases where the individual has been through the system several times in the past and received financial assistance, accommodation or other form of support. It appears that especially in the case of repeat offenders and as these resources become decreasingly available, the level of difficulty in establishing and fostering working relationships increases due to mistrust towards the probation officer who now does not have the necessary resources at their disposal. Where resources are limited it may become less likely that the individual can appreciate the challenges facing probation officers and put trust in their ability and intentions to provide support.

There are several contentions following this realisation. Limited availability of resources becomes a barrier in establishing working relationships not only in and of itself but also, when the individual is made aware of this gap and realizes the ways in which it may affect their supervision. Moreover, as far as the elements of trust and faith in both the system and the individual practitioner are considered essential in the task, the lack of trust in the probation officers' abilities that these practical limitations create has a direct effect on the prospect of establishing the relationship in the first place. It also appears that repeat offenders represent a special category of individuals under probation due to their pre-existing 'knowing' of the system. Finally, the effect on human rights considerations may be equally worrying; it has been shown earlier in the thesis that engaging with needs and rights discussions requires knowledge of who the offender is and what their circumstances are, which becomes less probable a prospect in a climate of lack of trust and understanding.

On the same note, it is worth highlighting the concern this raises in regard to repeat serious violent or sexual offenders under MAPPA. This category may, on the one hand, require even more detailed knowledge of their circumstances and background, and on the other indicate some rehabilitation gap or omission of the system in their past supervision. It is thereby contended that instead of directly addressing that gap and working towards a closer relationship based on a rights balance, resource limitations and their by-product of mistrust are in effect leading to the opposite outcome, thus further reducing the prospects of reintegration and preserving the cycle of reoffending.

An observation that has been made in all of the participants accounts is that in getting to know the offender, actual contact remains the most effective way. A considerable part of the literature in the area indeed focuses on how desk-bound tasks and actuarial risk assessments limit the availability of practitioners to meet with the individuals they work with both in custody and the community. The participants of this study have also expressed a concern as to the extent that risk assessment expectations interfere with their ability to establish contact, and in turn whether this allows for the creation of a representative of the offender's situation assessment:

*"your relationship is about good quality contact, good quality dialogue and just plain speaking, that's what I tell my offenders [...] always, the more contact you have the better quality assessment you can make in terms of your decisions because you become familiar and acquainted with whatever that person is about"* (Melpomene)

*“and then obviously when you meet them [that risk assessment] doesn’t take the place of that at all, you’ve got to get to know that person now [...] you’ve got to give the offender that space to connect with you” (Terpsichore)*

Terpsichore has interestingly revealed another dimension of the importance of these meetings in understanding the offender and their needs to which the literature in the area may need to give additional attention, namely body language. She further explains this is so integral in their assessment of the person that the video-link facility or tele-conferences that probation offices use across England and Wales may not suffice: *“I don’t do that regularly because you need to see people’s expressions when they tell you something you need to see their body language”*. This becomes even more relevant to the case of MAPPA where the potential of human rights violations and complex circumstances of individuals may indeed require that additional level of engagement on the part of the practitioner. The observation above further reiterates the need to reconsider the attitude and role of probation in safeguarding human rights, and that establishing relationships based on a rights culture means the migration from solely assessing the risk and towards closely working with the individual. It is thereby contended that a focus on how individuals managed under MAPPA verbalise their situation, express their concerns and use body language are of particular assistance in reintroducing and reconsidering their rights in the equation;

*“the very serious with a lot of other needs I’ve always made a point of seeing them face to face and also, when I have had conversations with them, when I’ve seen them face to face and they’ve said something, even a so called*

*'positive thing', how they've said it to me has been telling, and I've thought that's really interesting; what you didn't say to me I want you told me with your body language; that was of more importance to me"* (Terpsichore)

This also explains one of the reasons why the majority of participants agree on the fact that considering OASys, RM2K or other risk management tools as a substitute to meeting the individual is an 'unfair comparison'. As seen in earlier sections of the data analysis, risk assessment tools do, despite their drawbacks and tick-boxing nature, provide a form of structural consistency, capture information from different sources, and assist practitioners with addressing the different issues that might be potentially conducive to the individual's risks of reoffending and harm. The comparison may indeed be unfair as the type of information and insight each offers can be of different nature and focus, especially considering the fact that quite extensive parts of the assessments in question are completed prior to or without meeting the offender. However, there may be an argument that, on the one hand, the expectation is that they complement and inform one another and thus find themselves on an equal footing; but on the other, should there be a sort of hierarchy based on which source provides a promising avenue to understanding rights considerations, face-to-face contact may prevail.

This reconsideration of the two within a rights discourse has not been prominent in the relevant literature; as it has been shown in the review, most studies have focused on the consequences of the emphasis on risk assessment and the understanding of the probation officer role as a risk manager. Almost half of the accounts in the present data advocate that the risk assessment cannot operate



in a vacuum, and its reliability depends on developing that working relationship with the offender through meetings, discussions and regular contact. Euterpe who has been acting as a probation officer for over 25 years with a background in administrative roles, finds that regular contact helps her understand the extent that the individual is proactive and has taken own initiative in the course of their rehabilitation which has to be continually revisited and updated in the process. She makes frequent use of various forms of contact with the cases she manages but believes one-to-one interviews maintain transparency and make her assessment more accountable. Other participants have underlined how there cannot be a realistic risk assessment or consideration of needs without the use of interviews but also, how, at the same time, the practitioner needs that set of questions the risk tools provide as an aid to the discussion;

*“I think the OASys document can guide an effective interview because just by saying did you have a good childhood? [...] which is one of the questions of OASys, you can open up a whole load of things: what did they witness, were they subject to DV, have they been molested” (Polyhymnia)*

This, however, is thereby implying that practitioners may need to be careful in the way they use risk assessment tools, especially in a work environment where risk assessment has become more of the main task rather than a form of guidance. The explanation above succinctly demonstrates how certain elements or sections of OASys may prompt a productive discussion, and then, upon that, explore root causes of offending, needs to be addressed in managing existing or potential risk factors, and eventually lead into bespoke reintegration plans which as a result exhibit less potential of unlawful

interference with human rights. The same participant reminds though that many risk tools are limited in the way certain information can be recorded – for example, the PO explains that there is no designated section in OASys to explore the situation where sexual offenders are attracted to young children so, the assessor puts that under relationships if it appears that the individual thinks they are in some sort of relationship with the victim; that information, nevertheless, would be then further discussed in a meeting. It is the current contention that this juxtaposition of remote assessment and regular contact reveals the vital role of the latter in establishing productive relationships, and, more importantly, tells a cautionary tale whereby

*“if you purely stick to the questions you need to ask for OASys, you could restrict yourself in getting to know the offender and you could limit the information you get out of them, but if you just use it as a guide I think it can be quite useful in some talking points”*

It remains noteworthy nonetheless that the majority of the participants also commented on the role the individual is invited to play not only in the development but also, at the beginning of the relationship with the practitioner. These observations focus primarily on lack of cooperation on the part of the offender even if there is regular contact, or instances where the individual is not willing or does not feel comfortable to engage in a discussion of their offending or life experiences. Clio who has been working in probation for nearly 20 years and come from a public policy academic background, has identified two issues following the above attitudes, namely expectations of professionalism and senior probation officers. The former may present a potential barrier to a

working relationship and communication because it appears to become an issue when there is already a functional relationship in place. She explains that there are cases where she managed to develop that relationship and familiarity with the individual and their background circumstances but had also to maintain that 'professional distance'. An attitude of over-familiarity and -sympathy may misrepresent or skew the role of the probation officer in the eyes of the individual. This bears the danger of misplacement of expectations whereby the individual may start to expect more leniency or relaxed measures in their management plan and license conditions, when in fact, Clio notes, in certain cases the individual was well-known to the practitioner, but several things were still being checked which means no promises or guarantees could be made at that point. This becomes particularly informative to the present study as it shows there is yet another balancing act the MAPPA probation officers are invited to engage with, namely the one between befriending and a risk-averse professionalism.

The thesis has previously identified the well-established conundrum between punishment and rehabilitation, punitive versus rehabilitative attitudes, as well as the organisational tensions and transformations the probation service goes through which have informed this research's public protection and human rights debate. The above new dimension emanating from the data in regard to achieving a balance of attitudes within the individual and practitioner relationship can again be viewed as symptomatic of the same wider debate. It appears that in developing that relationship, the practitioner simultaneously develops a protective, shielding attitude due to the persistent demands of risk

which can at any point impose a measure to which the individual might not be welcoming, notwithstanding any efforts of the former to explain their decision.

This is well reflected in the scenario of supervised contact with the individual's children. The data supports that this measure is introduced especially if social services have requested that to be added in a license, but it also reveals that it is not always that the probation officers agree with this intervention because it does not exhibit the required level of trust and confidence in the individual's progress;

*“children services have said supervised contact which again I haven't been against in the sense that I've not seen it, viewed it to be a long term measure as in forever and ever but, as in time-limited and then move on to perhaps a little bit more trust given, such as a town visit let's say in an open arena, but a lot of offenders, well not a lot but some of them, a good portion will refuse completely supervised contact and they will either say 'I will wait until it's taken via the courts, I would rather deal with it that way', for some 'I would rather wait until my children get a bit older for them to make their own decision whether they want to see me but I'm not happy to have supervised contact, not for my own children' ... it's bloated their pride as well, 'this is my own flesh and blood and I've got to be supervised? Well if I'm that dangerous and if I'm that harmful then you know what let me not see them at all' not that they believe that, but it's kind of like 'I believe my children will think intelligently and they will make their own minds up and I will explain to them”* (Terpsichore)

The account and example above present how sensitive and dependent on trust that working relationship is, and how certain decisions and attitudes of probation officers cannot be understood as being entirely their own. It becomes challenging in situations such as the one described above to re-build that relationship at a point where the individual now has an understanding of themselves as 'dangerous', or thinks they are being viewed as such. This further complements the literature review remarks on the levels of alienation, and how it is not only the public that extends that attitude of 'otherness' towards the offender, but also, rather indirectly and inadvertently, the practitioners in their attempt to satisfy the demands of risk and public protection.

It is thereby argued that in such a scenario of now 'spoiled' relationships, human rights considerations and understanding of needs are compromised: the individual starts drifting away and does not acknowledge any prospect in making an effort to follow a rehabilitation plan due to being labelled as 'that harmful'. This in turn makes it even more challenging for practitioners not only to re-establish that relationship but also to re-discover who the offender is in a way that any further measures taken from that point onwards remain proportional to the aims of MAPPA as well as in accordance with the individual's human rights. It thus appears that proportionality becomes increasingly important in circumstances where trust in the probation officers' abilities and intentions has been compromised because it is at that point the individual might feel most neglected or in need to seek legal recourse and have their rights reinstated in the manner the case law analysis has earlier exemplified.

Clio emphasises that in preventing that 'drifting away' of the individual, the probation officer must also take ownership of their decisions and be able to justify these to the individual especially where these are the product of multi-agency collaboration;

*"children services were not inclined to let the offender move back in and that was very difficult, and it's not very good when you're probation officer because, and they are right to say this, the offender was like 'hang on, it's your decision so, if you think it's ok for me to go there then you should say I can go' and that's partly true; it is ultimately our decision as probation ... it's important to maintain credibility ... it becomes a murky area, very grey and that can affect your working relationship with the offender"*

This introduces the suggestion that the defensibility of decisions with which evidently probation officers appear concerned does not only relate to public expectations but also to the individual. This version of defensibility appears key in maintaining a constructive relationship with the individual, keeping them engaged with their reintegration plan and ultimately setting a good example for the individual: it would be almost misplaced to expect the individual to take ownership of their offending, evidence their initiative and progress, and accept responsibility for their actions when the practitioner is unable to exhibit and reciprocate the same qualities in the relationship. An attitude of 'double standards' may bear more probability of alienating the offender and creating an impersonal, risk-averse relationship that proves less able to accommodate a consideration of the human rights of the individual.

Polyhymnia has indeed acknowledged previously in the analysis the danger in 'allowing' that attitude to take effect during the supervision process. She highlights how that is particularly concerning in cases of individuals who have experienced alienating attitudes from professional organisations or at a younger age, which makes it vital then to appreciate that Probation *"can't be another professional body that does that as well, so we need to be working with them and recognising any individual needs"*. It now appears that 'working with them' involves the practitioners understanding how their decisions affect the psyche or, as the data has suggested, 'pride' of the individual which in certain instances can actually be constructive or encouraging and assist with moving away from alienation. Polyhymnia continues to identify that professionals recognising the individual's progress is essential in establishing or reinstating a working relationship and an appreciation of their needs. This introduces an essential dimension to the relationship and suggests a need for greater emphasis to be given on understanding the effect of decision-making on the offender's journey through their management plan:

*"when you actually look at it your initial reaction sometimes is 'you can't possibly do that' but when you break it down there's full compliance, they're getting on, they want to better themselves. As a service, we should be supporting that so they got it, they can do it; and I think the flipside of that is when I told the offender the news there was that extra level of kind of almost pride that a bunch of professionals are recognising they are making progress and they are supporting them in moving forward"*

It follows that this realisation becomes of direct relevance to MAPPA which relies on multi-agency working and practitioners from different professional backgrounds reaching decisions and compromises that have an impact on the reintegration of the individual. A contention is hereby made which supports moving away from cautionary and risk averse measures which have been proven to put a trusting relationship in jeopardy, and towards faith in the ability of the individual to change. This may in turn be better suited to accommodate a rights balance and limit the situations upon which human rights complaints may be grounded. Measures and decisions taken in such a manner provide a greater prospect of proportionality because they not only satisfy the demands of public safety and prevention of crime by replacing offending with more productive behaviours. They also provide a supportive road to rehabilitation of the person that looks into employment, fostering relationships and reinstating the individual's own-initiative which can collectively sustain a long-term reintegration rather than focusing on discouraging, short-term punitive measures.

It remains pertinent though to examine what the literature and case law have not directly addressed, namely how that encouragement is being provided, and whether there is, or could be, a shared understanding among MAPPA offenders and practitioners as to what constitutes an encouraging or discouraging attitude. The majority of this study's participants who have explored this matter in the course of the interviews appear to be mostly concerned with encouragement in the sense of 'rewarding' the individual in instances where they show signs of cooperation and progress. It may be argued at this point that on the one hand, this attitude of a 'rewards scheme' can gradually lead to the



individual working on and taking ownership of their offending in the interests of receiving that reward. On the other, the same attitude of 'give and take' which Thalia of over 25 years of experience with probation and a degree in education, expresses as an expectation on the individual to appreciate that "*with rights come responsibilities*", appear to echo how this "*contemporary communitarian idea has an impact similar to less eligibility and presents a further obstacle to the establishment of offenders' rights.*" (Gelsthorpe, 2007, p. 498) The same attitude may further unintentionally reproduce those problematic conceptualisations of criminal justice as another impersonal business model with equally hindering effects on human rights.

Calliope explains that rewarding can take many different forms based on the specifics of the case, the type of the offender and their circumstances, as well as whether they are in custody or the community; for example, for some individuals having to attend less frequent meetings once the issues raised at induction have been addressed can take the form of reward, or, in other words, exhibiting an attitude of trust towards them by removing that need of continuous oversight. She further explains that what she would reward in the cases she manages is engagement and effort on the part of the individual, and in the task also try not to view this from the perspective of compliance, but rather employ it as a form of balancing act;

*"trying to get that balance between risk management and rehabilitation ... granting the person more freedom over time really if they are, it's not very nice to put, compliant, and seen to be doing well with their life"*

It is noteworthy how expressing this in terms of compliance does not agree with her, but also that what she would reward is 'doing well with their life'. In regard to the former, it is argued that this may echo corresponding contentions made in the literature review as to how certain impersonal attitudes based on punitiveness, compliance and management are not so much the individual practitioner's or reflective of the individual practitioner, but rather wider systemic attitudes that have been imposed on them. As far as the latter is concerned, what sort of action they might reward can be quite subjective which should form a fitting strategy given the individuality of each case and that each offender exhibits different needs and priorities.

Also, the preference of 'doing well with their life' over 'compliance' may initially seem as a play on semantics, whereas this reminds of the importance of the language used in Probation, and the need for reconsideration of certain terms when implementing a 'rights culture'. It is hereby noted that adopting phrases of that character are essential in the task of fostering working, needs-based relationships because they remind that probation and reintegration are focusing on the person and have an inherent social role which ultimately warn that a management plan should not only be about monitoring risk.

In other accounts in the data, the same rewarding attitude takes the form of 'checks and balances' which may interestingly project the individual as more 'accountable' in evidencing their progress;

*"I think the root of giving someone more liberty goes through 'checks and balances'; we don't arrive at that decision lightly so, there will be evidence of*

*risk reduction, there will be evidence of monitoring that's been undertaken by the police by us whereby we think we've seen that improvement, there's nothing else that's come to light ... we have to show a little bit of trust and you have to reward good behaviour, but it's not just a case of you've been complying we'll reward; it's about what have you shown to us for us to give you that reward, has risk reduced? We could argue yes because this hasn't happened, because you've shown yourself accountable" (Terpsichore)*

Although self-monitoring and accountability appear promising for the individual's reintegration, this understanding appears more on the side of 'has the risk reduced' and 'have you been complying' so, it may be argued that there is not a single understanding or approach towards how and when that reward, whatever it may be, should be given to the individual. The attitude above also reflects signs of a more defensive, tick-boxing approach which, as explained in earlier sections, appear to be the product of broader persisting risk-averse expectations within the institution. The references to 'evidence of risk reduction', 'has risk reduced', 'there's nothing else that's come to light' are again telling of that preoccupation that has been witnessed in previous participants' accounts with being able to insulate their position should anything goes wrong which remains conducive to alienation of the individual and apparently leaves little room for consideration of human rights in the decision-making process.

A final feature of the relationship in question the data has brought to light is the role and input of the family of the individual. What the majority of participants appear to be advocating is that the family of the offender may have a role in supporting that working relationship by providing to the probation officer the

opportunity to experience yet another facet of the individual when they are among their communities of care. The literature review has observed a focus on the importance of family as another aid to rehabilitation whilst, in other instances, acting as a barrier, i.e. in cases of criminal families.

Calliope provides a rather novel dimension to the role above that does not solely include the individual but, the practitioner as well; she explains that, where possible, getting to know the family of the individual makes her feel more involved in that unit. Rather than working with that individual and understanding things passively, Calliope notices that experiencing, for example, the way they talk to their mum might show a completely different side, aspect and colour of the offender. She also thinks it is helpful when families come to them because that shows trust, and they can then actually support the individual, and experience first-hand the family impact on them and their reintegration. This may further assist with substituting those instances where what the probation officers do might be received as punitive or 'authoritative' with more engaging ways of interaction. This observation of inclusive and humanist attitudes on the part of the practitioners may also be particularly helpful when considering rights and, more specifically, family life which this thesis has shown constitutes the basis of the majority of human rights complaints in Probation. Although Article 8 is a qualified right based on proportionality and necessity, appreciating the reality of family life and its role in the course of the rehabilitation of the offender may indeed assist practitioners in better accommodating the right to family life within a management plan, and thereby adopt more balancing attitudes towards risk and human rights.

The above first half of the relationships theme has made a significant contribution to the area by underlining the nuclear importance of the offender-practitioner relationship and getting to know the individual in establishing a human rights practice and culture in probation. The participants have highlighted certain underlying factors that link to the present research questions regarding the formation of the probation officers' attitudes and include how it could be months after release they are able to meet and establish contact with the individual, the limited availability of resources at their disposal, such as AP's, employment skills programmes, housing and others, and how risk assessments restrict themselves in knowing the individual cannot establish a ground upon which operational compliance with human rights can develop. Participants have recognised that they should be in a position to reciprocate in the relationship the qualities they expect from the individual in order to then be able to draw a RMP based on proportionality and transparency. However, the wider systemic attitudes promote an interaction under the auspices of less eligibility and expect of practitioners a compliance exercise whereby "with rights come responsibilities".

## b) MAPPA – Professional relationships

This section of the data analysis focuses on the professional environment and relationships within the MAPPA framework as presented by the participants in order to examine whether these have an impact on their attitudes towards balancing rights and risk. The main considerations that have been raised in this part of the interviews relate among others to communication and cooperation among the different agencies involved in the process, availability of resources, the difference in aims, purposes and opinions expressed in panel meetings, the benefits and limitations of its structure, and the representation of the individual in decision-making. This latter observation in regard to the extent the individual is represented in the process raises certain noteworthy implications for the human rights discourse to which the literature in the area has not given the required attention.

The initial observation across the sample in respect to MAPPA is that the participants appear relatively 'balanced' in their discussion of the framework and its potential in helping them understand the individual and their needs or rights. The interviewees acknowledge the benefits and rationale of its multi-agency character and how that may draw a broader picture of the individual especially at the initial stages of the process. However, they do express significant concerns as to the reality of MAPPA, the extent that other agencies are actively involved in the process and whether all panel meetings remain informative of and beneficial to the case of the individual. All participants have in the first instance mentioned the police as an agency that bring input about previous conduct or offences of the individual that were not recorded elsewhere, and to

which, as probation officers, they would have not otherwise had access. The reasons for this vary but, based on this data, appear to be mainly linked to instances where there has been a recent development in the life of the individual which was solely reported to the police, or cases where there is confidential intelligence information involved that can, at least on an initial level, only be shared with the police. Three of the participants though have further indicated that the 'information sharing' process is not always that structured or limited in the sense of only concerning concrete pieces of facts and reports: they also see this 'panel' opportunity as an arena where they can share thoughts, feelings and even "*hunches*" about the case being discussed at panel. The same officers feel that this provides a better avenue for critique and exchange of opinions based on the agencies' expertise which the probation officers feel might be more useful than introductory or mere factual updates which may as well have been shared through an email or telephone conversation.

More importantly, Terpsichore recognises that different agencies use different assessment processes and sources which means that the framework provides a promising avenue for aspects of the offence or needs of the individual that have been overlooked in the risk assessment to be brought to the attention of the panel. She further explains how this establishes a form of safeguarding for the probation officer who is otherwise carrying the defensibility of risk management decisions alone;

*"a good protection for all of us that you are not carrying all the responsibility alone, it's a shared responsibility which is a good feeling and you know you are*

*supported and you know you are working with others and not working in isolation and that's a really good thing"*

This raises a number of considerations in terms of both the expectations and attitudes of probation officers towards MAPPA as a balancing process as well as its prospects in getting to know the individual. In the first instance, the above confirms one of the overarching contentions expressed in the literature and earlier sections of the present data analysis, i.e. the probation officers' preoccupation with the defensibility of their decisions. Practitioners appear to remain concerned with the aftermath in cases where things might go wrong, and how this need for more input and inclusivity in the risk management process may make their decisions more accountable. This observation reiterates that management of MAPPA individuals raises a variety of issues that link to specialised areas that the probation officer could not adequately review without that input from expert opinion.

The element of responsibility as expressed in the present context is directly relevant to the thesis' purposes. The notion of a shared responsibility may be 'a good protection' and 'good feeling' because if things go wrong and a SFO does happen while the individual is in the community, the probation officer has a sense of assurance that the decisions made can still remain accountable. This also further links with previous observations made in the data that probation has always been carrying the duty of being answerable to individuals, media and the public as to the rationale behind license and other conditions imposed on the individual. The same situation has had a direct impact on relationships between individuals and practitioners, but the above viewpoint also confirms



that this sense of 'shared' responsibility, although limited in its potential to be referenced or appealed on, remains significant for the practitioners' morale.

This shared aspect of responsibility, nevertheless, does not only appear applicable in instances of SFO's where public protection is at stake; it also becomes relevant where the offender rights may be infringed. Where there are human rights complaints or stringent conditions placed on an individual, the probation officer will still remain the agency answerable, in the first instance to the individual and then in any litigation process. Again, even though this is not to express an attitude of delegation of the responsibility or present the decision as 'someone else's fault', it remains a form of support for the practitioners to know that if they have indeed failed the individual in a human rights sense, there was still an element of collaboration and balancing of opinions underpinning the infringement. What is also interesting in the statement above is the reference to isolation which has been a recurrent view in the data and one which has been revisited in the literature review in the sense of alienation. This revealed the various levels of alienation which relate to both the individual and the practitioners but, what the views of the participants on MAPPA have further brought to the surface is that the process itself may not be that inclusive or multidimensional as the framework suggests.

Even though the interviewees have commented on MAPPA by starting with the benefits and what is going well, this, apart from the statement discussed above, has been very limited to short phrases such as 'MAPPA is good', 'empowering', 'it's got its benefits', and a focus on its use as a platform where information and intelligence can be shared. They did not feel the need to elaborate on the

positives of the framework as a whole or its support in getting to know the individual and in the later stages of the management process. The elements of alienation and isolation are among the main aspects which have well demonstrated the need of participants to rather express in considerable extent what has been troubling with that seemingly multi-agency facet. They indeed add yet another level of staff alienation which this time does not come from the public's ignorance or the media's criticisms, but rather the agencies themselves who more often than not appear to be isolated from the MAPPA processes, and thereby, defeating the aim of a shared responsibility seen above;

*"prisons feel alienated from the MAPPA process, all the panels I've been we probably had prison feedback from about 4 of them and probably one occasion someone from prisons was actually in the panel"* (Calliope)

*"sometimes you do feel slightly intimidated and other agencies who haven't said anything against what you are doing in the meetings certainly change their attitude and it all comes back to 'why didn't you recall why haven't you done this why have you done that' and the cases, although we hold them, they are not just our responsibility, the whole purpose of MAPPA it's to work collaboratively with other agencies to manage a person's risk and sometimes it doesn't feel like that, generally with police and social services"* (Urania)

*"you then send that to the police and make comments, although they normally will go along with what you say, you send all those things to people you don't know so there is not much actual multi-agency working in the strict sense due to*

*that impersonal element and tick-boxy exercise [...] it's just to get the process done rather than own your cases, and then move on to the next thing" (Erato)*

The participants explain it is police, prisons, social services and occasionally housing that normally attend panel meetings alongside probation. Indeed, none of the participants went into detail about prisons' input or attendance, and, following the above, it may be contented that they are among the least involved agencies in the process; this appears surprising given that a considerable part of probation work takes place in prisons.

The reference to intimidation above is further noteworthy, if not worrisome. This contradicts the previously expressed opinion of MAPPA providing a form of protection and shared responsibility, and also, echoes concerns raised in the literature review as to whether MAPPA remains true to its purpose in all instances, i.e. collaborative offender management. This is not only leading to an apparently dysfunctional risk management framework. From the thesis' perspective, it also becomes questionable, firstly, whether MAPPA can effectively support the getting to know the individual and their needs; and then, to what extent, if at all, MAPPA reproduces instead of defeating those punitive, defensive attitudes which have proven detrimental to the development of a human rights culture. These questions will be revisited throughout the rest of this section of the data analysis but, suffice it here to say that the participants' reference to tick-boxy exercises within MAPPA do not provide a promising element as long as these signify and remind of similar bureaucratic tasks found in risk assessment.

This inquiry into the extent that MAPPA accommodates rights considerations and impacts on attitudes towards balancing competing interests is reflected in the interviewees' views of the framework's character and its balancing of the agencies' agendas. This introduces a new aspect of the present inquiry into understanding practitioner's attitudes: the literature review and previous parts of the data analysis have so far shown how certain external to the framework factors have had an impact on professional approaches to balancing questions about rights; but the orientation of the framework within which the decision-making and assessments take place may also have an imposing effect on the practitioners. Calliope comments on this orientation and where the focus of MAPPA sits, and finds that

*"sometimes the MAPPA process, it just very much becomes around risk management and not necessarily a focus on I guess rehabilitation or supportive factors; it very much to me seems like a process that is very risk focused, it's widened very much towards the risk management side than is towards being a supportive measure."*

It thus follows that despite its usefulness in sharing of information, introduction of a much-needed expertise and provision of alternative assessments of the individual, it remains problematic if the overall focus remains and errs on the side of risk. It is contended that in such a panel situation where multiple agencies, no matter the approach each one comes from, are all put under a reorientation that authorises and reproduces risk-averse attitudes, it becomes even more difficult for probation officers to 'digress' and replace these with more rehabilitative or rights-based ones.

The majority of participants appear to reach a sort of consensus on this:

Polyhymnia believes it is important that the lead agency is probation, not only because no matter what happens around the table the end decision and license conditions remain with probation; but also, due to the fact that Probation work in a more holistic manner with the individual, and are in a better position to take into account the whole picture of the offence/individual;

*“the police only work with one side of the offender, not so much on the rehabilitative side of things [...] you can have a real sometimes contrast between probation and police”*

In addition to this, there may be a direct impact on attitudes and professional relationships if the conception is that a hierarchy of punitiveness exists among the different agencies. It is reminded that MAPPA is not merely focused on the various agencies providing information to probation but also, probation sharing insights and observations made during their interaction with the individual.

Although it could be argued that probation is in a position and comes from an angle that can present a more holistic view of the individual, they may still need to exercise caution as to how and when this representation to the panel is made. Terpsichore recites an example on point where upon a request of information from another agency, she felt it would not be appropriate to share that there and then, not so much due to disclosure limitations, but rather because *“with that information they are likely to take things down a certain route immediately whereas we may still be checking things out”*. It may thereby be the case that the MAPPA framework has probation officers acting in a rather

cautionary manner in ensuring that arbitrary or unnecessarily restrictive measures which may lead to human rights violations are avoided.

As explained at the beginning of the thesis, notions of non-arbitrariness and necessity are pivotal in the discourse and observance of human rights obligations. The above observations thus exhibit that as far as there is a shared responsibility in risk management there shall as well be an equally shared responsibility in ensuring that human rights expectations are not met or advocated by probation alone. The same point is also reflective of what the role of probation in that panel and, by extension the framework itself, might be, namely an advocate for the individual which compliments what has been described as 'an advocate for the indefensible'. Melpomene explains this attitude by use of an example where the individual posed risk of harm to women and requested that he is allowed to form friendships, go to church and access other resources in the community which she would allow based on her assessment. However, when the case was discussed at panel the police did not agree with the propositions, and the probation officer thus found herself in a position where she would have to explain that even though there are known risks, the individual has made considerable progress in terms of rehabilitation, i.e. finding herself in the role of an intermediary and

*“that can be tricky, but you want some balance [...] there has to be some relaxation; a person can’t be locked up all the time or stay in AP all the time without going out and being able to live”*

This raises a significant concern in terms of whether MAPPA indeed fulfils the purposes for which it was established, and whether the probation officer does leave the panel knowing more of the individual and their rights. It has been shown above how probation may find themselves feeling almost intimidated by the rest of the agencies in having to defend their decisions which compliments the current view. What the 'advocate for the individual' role is adding to the equation is how the dynamics of MAPPA have the potential to re-prioritise own agendas and, also shift the focus away from the individual and towards a fixation on risk. In this climate, it becomes questionable whether the framework's purpose of probation officers drawing more inclusive and transparent management plans based on the needs of the individual is met.

This is increasingly concerning when considering the role of probation in that panel as an 'intermediary' or 'advocate'. MAPPA and panel discussions were never intended to simulate a court setting or, a platform to accommodate parties with opposing views and claims and, probation having to defend what the others see as the 'indefensible'. This would, if anything, only have a negative impact on the attitudes of probation officers towards balancing public and individual interests: the practitioner is now becoming even more preoccupied with remaining not only defensible but also, as considered earlier in the thesis, more defensive in their decisions. It would be assumed that the inclusivity of MAPPA provides a remedy to this defensiveness in attitudes which socio-political demands have constructed and imposed on probation practitioners; but what the framework may, despite its much needed benefits and expertise, have contributed to in certain instances is to further reproduce those punitive and risk-averse agendas:

*“other agencies may lay emphasis on specific risks they focused on and that can sort of skew your view of the person and actually you may be the only person who actually knows your offender properly or more so than the other agencies, and I think in instances like that you need to communicate where you can see sort of different sides of the offender with the other agencies you are working with otherwise the view of the risk of the person can be skewed and that’s when some of the tensions can arise” (Melpomene)*

The observations above that MAPPA may in certain ways skew the practitioners’ view of the individual and thereby leave probation as the agency that know the most about the individual to ameliorate the tensions, are turning those multi-agency and collaboration promises into unfulfilled expectations: there remains only a limited scope and amount of information that can be useful from a rights- and needs-based perspective, and it is the probation officer that now becomes the educator and ambassador of that approach.

The majority of the participants appear to express similar concerns as to the extent that MAPPA contributes to their management and support of the individual. Urania, coming from a more practical aspect, uses an example from her caseload where securing accommodation for an individual in the community was difficult due to the nature of previous offending despite the individual having shown progress, cooperation and even proactive attitudes in finding accommodation. She explains when that was taken to panel, Housing who is normally a representative of the Council did not appear willing to mitigate the tensions or liaise with accommodation providers which makes her wonder ‘*what*



*is the purpose of MAPPA in that case'*; the individual remains essentially 'stuck' in a hostel for months with no prospect of replacing this with a more reintegrative accommodation strategy. Polyhymnia believes that similar situations are indeed regrettable because Housing agencies working with them under MAPPA do have that access to accommodation providers whom probation do not have at their disposal. She explains that there is a true benefit for the individual and the service in general because there is much involved in moving the individual to a different location or premises; Housing being there "*it can really help open those lines of communication [...] and can make the transaction a lot more seamless*". She agrees with Urania in that the individual remaining indefinitely in AP's is "*a step backwards*" not only because of the lack of community reintegration that exhibits; in a shared kind of facility, where there are a lot of high risk individuals or evidence of drug abuse, she recognises that they are not really helping or respecting their rights in the absence of continuing justification for the restriction. It follows that the participants do appreciate the need and potential for the MAPPA process to provide access to resources, facilities and eventually secure a better service and support for the individual to turn their lives around; the problem remains where these initiatives are dominated by an overarching and misplaced fixation on risk.

A pivotal observation that a third of the participants have made and which the literature in the area has not addressed in the context of balancing interests in probation practice is the extent that MAPPA makes provisions for the representation of the individual and their voice in that otherwise multi-agency process. The MAPPA Guidance Manual explains in paragraph 10.20 that

*Consideration must be given to seeking representations from the offender before a decision is made to disclose, in order to ensure that all of the information necessary to make a properly informed decision is available. Seeking their representations should be the norm, but there might be occasions when it is not possible or safe to do so.*

Even though there is no statutory or Convention right to representation, the participants who raised this matter did appear quite interested and concerned with the practicalities and reality of seeking representations from the individual. These develop on preceding remarks made on representation and are examined here in view of firstly, ascertaining their practical relevance to and applicability in the MAPPA process, and then whether this should indeed be expressed in terms of a 'right to representation'. A problem with this, the data suggests, is that the individual is not aware of this 'making of representations' not so much because the practitioners do not bring this to their attention, but rather a wider unawareness of the framework. It appears that individuals themselves are not familiar with the notion of MAPPA even when they are managed under the framework or, with the concept of being discussed at panel. This begs the question of how the individual could be expected to make representations, appreciate the benefit of doing so and cooperate with their probation officer in that respect when the wider process itself and the multi-agency working are not clear to them in the first place;

*"a lot of offenders who are discussed at panel don't know what MAPPA is or don't know that they're being discussed [...] the process is supposed to be that they're given an opportunity to submit any thoughts any questions anything they*

*want asked or said to the panel but you pick up cases that don't know they are on panel so they can't possibly have the opportunity to do that if they don't know they're being discussed"* (Polyhymnia)

The data supports that this may be even more of an issue where an emergency panel needs to be set up at short notice while the individual is in custody in which case it appears that even the opportunity to seek representations is not a viable option. The same participants continue to explain that it is very rarely that they get any representations or requests from violent or sexual individuals with Urania noting that in a caseload of, for example, forty cases only one may actually raise something for the panel. This creates a number of concerns not only for the individual themselves but also their rights in the process of MAPPA. It initially links to the arguments previously raised regarding the alienation of offenders as a result of public and professional attitudes towards them. The present observation in relation to absence of the need to make representations exacerbates this 'othering' effect on the individual: it indicates that the individual may not feel as if they belong with the process. It is thereby contended that following previous observations of this thesis about how alienation has had a detrimental effect on human rights considerations, this new sign of isolation of the individual further confirms their distancing from the process and the practitioners. In the absence of representations, the practitioner knows less of the individual, their needs and what is it that they expect from the risk management process; it becomes even more difficult for the probation officer to represent and understand the individual's rights and then eventually incorporate these in their decisions.

A main reason behind the issue of lack of representations from the individual is the unawareness of the process or the framework itself which is for the study's purposes a noteworthy concern in and of itself. This links to earlier observations made in relation to the wider public unawareness as to the role of probation and the invisibility of the service as a whole which creates misplaced expectations and defensive attitudes. The inquiry into individuals' representations though adds a rather novel dimension to the understanding of lack of awareness around the service's practice, this time coming from the person who is supposed to be at the centre of the process, namely the individual. It is one thing to argue that the public remain distant from the practice and principles of probation and another, though equally, if not more, concerning, for the individuals who rely on the service, to be unaware of processes and decisions that will have a direct impact on their lives. As will become apparent later on in the present section, this gap or defect in the MAPPA framework is yet another evidence of isolation of the individual from the process that indirectly affects the working relationships between individuals and practitioners. Polyhymnia appears quite troubled as to why is it that individuals do not take this opportunity to make representations even when this is provided to them in good time, and she uses an interesting comparison to explain the situation based on her own experience with Terrorism Act (TACT) individuals. She notices that this lack of making representations is not the case with her Counter-Terrorism Unit (CTU) MAPPA individuals, and she would always find herself going to panel meetings with a list of representations and requests from them but almost none from her violent/sexual individuals. So, in that respect TACT individuals represent a 'special' category that she feels

*“they understand the process a little bit more ... they know from very early on they’re going to be discussed at panel on release because ... there’s so many agencies and work needed on the case that they all make submissions, or all of their license conditions are discussed at MAPPA and whilst MAPPA cannot make the decisions they can advise and you pretty much take on board what was said at MAPPA and that’s explained to them so they know ... but you can explain the same process to your violent offenders or your sex offenders and I’ve never had one of them turn up and say I want the panel to know this ... I think TACT offenders feel slightly more involved in the process and slightly more their voices being heard a little bit more in it and I don’t know if that’s just because most of our TACT offenders are MAPPA that when they talk to each other especially in custody they all know the process, [while with violent or sex offenders] I think it’s not until they get to the community that you then start talking about it and I think a lot of it can all sound about the same to them”*

The explanation above echoes what has also become apparent in the Risk section of this data analysis, i.e. how TACT individuals represent a category of individuals who due to separate interventions put in place for them may have a different experience with the service. Although this potentially raises a variety of considerations that are outside the scope of the thesis, it remains worth considering whether the comparison itself on the one hand, implies that TACT individuals get a ‘better’ service, have their voices heard more, understand and are involved in the process more and thus, despite having committed the most serious of offences, they may have a better chance in their rights being considered. On the other, the same comparison becomes informative as to the challenging aspects in the case of non-TACT individuals. Polyhymnia’s

observations appears to be returning to the issue of relationships with individuals and how still in the case of MAPPA that represents a collection of professional relationships, a constructive one with the individual too which has been fostered over time and is based on understanding of needs and expectations is essential for MAPPA to achieve its aims. Melpomene confirms this point and believes that with adopting that attitude *“you can represent your offender better and in terms of their rights you’re better placed to represent your offender if you know him”*. It may thereby be contented that the reason why TACT individuals appear more involved in the process and feel more confident to make those representations is not necessarily that they get a better service but rather, that they get a prompt, earlier opportunity or attention to develop a working relationship with the probation officer.

That being said, the matter of overarching risk considerations persists, and, despite the in a sense ‘better experience’ of TACT individuals, they remain the ones that may pose the most serious risk of harm. Indeed, the same part of the data underlines that *“on the flipside of that, the panels are more punitive for the TACT’s because the risks can be so great if we don’t manage a case properly so they tend to panel a lot longer as well so, they can spend the majority of their licenses being discussed at panel”*. The remark made here is particularly relevant to this analysis in two respects: firstly, there is an acknowledgment on the part of the probation officer that MAPPA bears the potential to become more punitive in attitude in certain circumstances and types of offenders; but it further argues it may be the case that a longer, more structured, closely monitored process, although exhibiting a punitive potential, is also providing more opportunities and time for the individual to make representations. This further

confirms how the enquiry into rights and public protection is a balancing act that involves a variety of other balancing acts that need to be examined in the risk management arena. In this case, even though a longer process might mean the individual having their license conditions constantly being reviewed or the creation of more instances where the practitioners may make restrictive additions to an existing plan, this also means more chances for the individual to bring their voice into the process or provide them with more time to become familiar and involved with the process.

This approach then creates more opportunities when used proactively not only for rights and needs considerations to be brought to the attention of the panel but also for professional attitudes to shift from purely punitive to more considerate of rights. What this depends on and may in fact lack, especially in relation to violent/sex individuals, is that expectation on the part of the individuals and practitioners alike to take part in and ownership of that process. Urania too appears troubled by the same situation of representations and provides her explanation based on feedback from individuals in her caseload;

*“‘you as professionals have already made up your minds you’ve already said you are going back into a hostel you can’t go back to your families we need to monitor you’ ... and I’ve tried to explain to them that I’ve put representations across because even if my offenders don’t want to do it themselves ... I do still put their views across to them ... but they see it as pointless they don’t see the point in making the representations themselves because they think it’s an already made conclusion, ... really hard to work that especially if that’s been somebody’s experience all the way through their criminal career and you going*

*in as a new officer and trying to explain what you are about and they just see you as another person who is going to shut them down ... it's a self-fulfilling prophecy"*

The reason given above is a prime example and demonstration of how this disinterest in making representations is symptomatic of dysfunctional relationships, and how MAPPA has not provided an environment where that can be ameliorated; individuals appear to have abandoned confidence in that the system will consider their views even if their voice is heard. It thereby follows that despite unawareness of the framework on the part of the individuals being a serious challenge to making representations, this is not always the problem: it may be that even in cases where they do understand the process their experience has been such that they do not believe their request will be acted upon. This also reiterates the importance of the experience the individual has already had with the system before they reach probation, and how determinant that could be for the subsequent relationship not only between the individual and the practitioner but also, as this discussion has revealed, between the individual and the MAPPA framework itself.

This is essentially introducing another level of relationships within probation which appears to be part and parcel of the relationship between individuals and practitioners: the one cannot really exist without the other and both depend on how other agencies have treated the individual in their journey through the CJS. It is certainly challenging in cases where the individual sees their probation officer as just 'another person who is going to shut them down' to accomplish a transition away from seeming hostility and towards a working relationship in



which the individual has replaced disinterest with faith in making representations.

Even though coming from a slightly different perspective, Polyhymnia too reaches a similar conclusion on this matter in that although this apparent lack of representations in violent/sex individuals may be due to the process being shorter for them and as such they have less of an involvement, she still believes

*“they just kind of think ‘dismiss it ah it’s just another probation thing’ and they don’t necessarily always fully appreciate that actually their voice should be heard at panel, and it’s a bunch of professionals making decisions about their life and they should have a role in that.”*

It is therefore argued that in accommodating this form of ‘right to representation’ there is a prerequisite that certain conditions have been met, namely that the individual is aware and familiar with MAPPA, the practitioner follows an attitude whereby they identify those challenging aspects in the experience of the individual with the system and, that those have been or are in the process of being replaced by more productive interactions and working relationships with both the practitioner and the MAPPA framework.

What remains questionable is again the extent that MAPPA itself provides an environment where this fostering of relationships and rights balance can actually be accomplished. The participants’ concerns with this aspect come initially in the form of difference in opinion, agendas, priorities and establishing fruitful communication. In respect of the last one, the experience can be mixed

in that the majority of the participants find that the main challenge here is not necessarily that there is not anyone available in the agency they need information from, but rather that there is a different person on the other end of the line each time they contact them. This makes those professional relationships more remote and difficult to establish which in turn has an impact in knowing the individual: the case is not efficiently owned, and becomes a form of commodity which is being passed on to whoever is available to deal with it at the time. Participants of this sample with more years of experience noted that they do recognise this challenging aspect of communication within MAPPA and they do see it happening with younger colleagues too. They, however, also explained that they have managed to remedy this problem after many years of experience with the service during which they had the chance to meet more people in those agencies and establish contacts whom they trust and directly turn to when needed.

Urania makes another significant observation based on her experience with MAPPA regarding how social services seem to face the same issues and challenges that probation do. She gives examples where one of her cases has had seven different social workers been assigned to them over the course of two years; and when she attends multiple panel meetings to discuss the same cases there is usually a new face from social services or even no representative of the agency at all. Half of the participants agree with this observation and further add that usually it is not that they disagree with the approach that social services take since especially in cases where there are child safeguarding issues, they are the experts and they have more contact with the family or relatives of the individual, so, as probation officers, they will aim to

accommodate their request or reach a compromise. The main concern appears in those cases where there is no input from the agency, or that input is limited and does not appear to have taken into account all the relevant factors or circumstances, interests and rights of the individual in the offender management process.

Calliope provides an even more specific situation to express these tensions among the MAPPA agencies and the direct effect they have on the relationship between probation and individuals. She describes a case where the individual had to be removed from an AP and was confronted by the police due to allegations made against them about maintaining contact with a potential victim. This has now created what she describes as a conflict of interest for her because the police are asking for a statement of bad character to support their evidence to the CPS which she is not comfortable to provide;

*“there is a conflict for me because this is going to tarnish any effective relationship with this individual forever, but at the same breath not supporting the police evidence could actually mean that this person isn’t brought to court”*

This conflict demonstrates the almost impossible balancing decisions that need to be taken in the MAPPA process, and how probation maintaining those professional relationships with the agencies involved may mean compromising their relationship with the individual and vice versa. This links to another collective concern that has come through the data where the probation officers feel that they need these professional relationships with the other agencies as they will be working with the agencies on a daily basis on a number of different

cases and for the foreseeable future. It is thereby an almost ethical conundrum when they find themselves in a situation where they may prioritise the requests of the agencies over the interests of the individual to secure and maintain that long-term, supportive cooperation with the MAPPA colleagues. This then reinforces the argument that has been put forward throughout this thesis as to how the attitudes of probation officers towards balancing public protection and human rights are not always their own, but rather ones that have been the result of external pressures, misplaced expectations, penal populism and, as this final note has revealed, the demands of a risk-averse professionalism.

c) Rights at the street-level

This endorsement of ‘constructed’ attitudes as rediscovered through the theme of relationships leads, the thesis contends, to a revelation whereby probation officers perceive and apply human rights based on a street-level bureaucracy. Lipsky’s (1980) account of SLB and the way it impacts on policy formation and implementation appear to be providing a promising template upon which these attitudes and balancing acts may be further elaborated and contextualised. It is not the purpose here to examine in detail SLB, its core elements or contributions which has been done extensively in the relevant social policy literature (Gilson, 2015; Brodtkin, 2012; Evans, 2011; Taylor and Kelly, 2006; Maupin, 1993). Nor exhaustively evaluate whether the theory is applicable to probation<sup>10</sup>, nor whether probation officers may be viewed as street-level bureaucrats based on their day to day practices – although, this latter enquiry is examined to a relative extent. What the present inference of the relationships theme explores is the assertion that as far as rights expectations and balancing attitudes within the MAPPA framework are concerned, probation officers may indeed appear to be employing an own, street-level approach in coping with the apparent uncertainties and challenges experienced with human rights policies.

Lipsky (1980) did put forward certain characteristics of SLB’s in his original and 30<sup>th</sup> anniversary formulation of the theory that have been demonstrated in the responses of the participants of this study. He explains that SLB’s are those public service employees

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<sup>10</sup> See Recommendations chapter for further discussion of the need for further research in the area of SLB in probation.

*“who interact directly with citizens in the course of their jobs, and who have substantial discretion in the execution of their work ... typical street-level bureaucrats are ... public officials who grant access to government programs and provide services within them.” (Lipsky, 1980, p. 3)*

Lipsky may have not referred to probation officers as SLB's directly, as in the case of police officers, and the academic attention on the applicability of the theory to this group of practitioners has been very limited (Wooditch et al, 2016; Halliday et al, 2009; Williams, 1992), but it may be argued that there are apparent initial connections between the two. Probation officers do come in contact with citizens in the course of their work, be it offenders, or victims, or members of the public associated with the aforementioned groups. Moreover, elements such as risk assessment and management, recalls, license conditions, rehabilitations programmes and other reintegration decisions that directly impact on individuals, become practical realities of the job which require a considerable exercise of discretion on the part of the practitioners and provide access to services and interventions. Wooditch et al (2016, p.3) also comment on these similarities and elaborate on the aspect of discretion in Lipsky's theory whereby probation officers as street level bureaucrats display

*“high degree of discretion and constantly interact with the public in the course of their duties. ... they have considerable power within the organization, their relationship with clients is non-voluntary ... Discretion is an unavoidable aspect of the street-level bureaucrat's role. ... They must constantly respond to the human element of situations”*

These observations have also been expressed in the present data too; the relationships theme has highlighted the presence and importance of the relationship between individuals and probation officers to the extent that it becomes essential for the purposes of offender management and rights expectations to be met. Interestingly, Wooditch et al (2016, p.3) also notice that *“the job encompasses a give and take of resources and referrals”* which again has been seen in a considerable number of the participants’ perceptions about human rights as an enterprise whereby the more the individual engages with the supervision process and meets the rules and targets of the management plan, the more respect and protection of their rights they receive. It appears that the same ‘give and take’ quality of SLB is reflected in the present data analysis, and echoes bargaining approaches to offender management and Thalia’s attitude towards balancing human rights and public protection of *“with rights come responsibilities”*.

What establishes more links between SLB and the challenges in understanding and incorporating human rights in probation that practitioners face is how Lipsky (2010, p.xi-xiv) explains that

*“street-level workers lacked the time, information, or other resources necessary to respond properly to the individual case. [...] Large classes, huge caseloads, and other challenging workload pressures combine with the contagious distress of clients who have few resources and multiple problems to defeat their aspirations as service workers.”*

The theme of relationships in offender management and MAPPA has also considered the detrimental impact of these challenges in terms of increased workloads, limited interaction with individuals due to time constraints and limited resources on their ability to consider and implement human rights in a more structured way. The data has also revealed that the overarching importance of public protection and the overemphasis that the framework places on risk limit the extent to which the rights of individuals are considered. The SLB discourse thereby appears to in the first instance coincide with the present human rights enquiry and more crucially, then provide a context where the attitudes of probation officers may be further justified if the latter are viewed as SLB's.

It is argued that in addition to the demands of risk, public expectations, lack of training and cumulative systemic failures, and following the perceptions observed in the above theme analysis, SLB provides yet another reason why probation officers may be thought as digressing from the prescribed human rights law and instead attaching their own meanings to it. Adami (2010, p.3) in his review of Lipsky's formulation notices the theory's focus on explaining how the relevant challenges practitioners experience do not allow them to adopt laws and policies in the manner described on paper and as a result, they adopt their own understandings in order to cope with the uncertainty and respond to the expectations of the organisation;

*"they have the capacity to shape public policy on the spot ... It is not always the laws written by legislatures, rather the daily decisions of street-level bureaucrats through their interactions with clients, which become public policy ... street-level*



*bureaucrats are not only tasked with implementing public policy, they actually mould it as the pivotal actors in the delivery of public services.”*

The process by which SLB's become policy makers as outlined above again succinctly echoes the mechanisms seen in the analysis earlier by which the participants have given a street-level approach to human rights. Their common unawareness of or unfamiliarity with the ECHR and HRA which establish the human rights legal framework as well as their duties as public authorities, coupled with the aforementioned challenges regarding resources, tick-boxing, misplaced expectations and lack of constructive relationships have lead to adaptations of human rights as 'fairness', a bargain between rights and responsibilities, family life, or even 'equal opportunities'. As previously explained, these do not necessarily represent the entirety or spirit of the ECHR, and while it is noteworthy that quite a few have referred to proportionality, necessity and notions alluding to legitimate interests, such as prevention of crime and protection of others, in justifying human rights interferences, the wider attitude observed remains one that cannot evidence a strict familiarity and accordance with the intended law and policy. Following the SLB insights, it does appear that what the probation officers have sustained in their attempt to cope with the uncertainty and tensions around rights considerations within the service is to indeed shape and mould human rights policy 'on the spot' through their daily decisions and interactions with the individuals.

The same enquiry that views in the context of the thesis probation officers as SLBs also agrees with what the participants have expressed above as an imbalance between responding to the actuarial aspects of MAPPA and

maintaining working relationships with both individuals and colleagues without compromising the interests of either group. The analysis of the present theme has shown that actuarial processes, time-consuming assessments and the priorities of other agencies in the framework may limit the extent to which they can work on building meaningful relationships with individuals. Added to this, incorporating other agencies' requests into the management plan might risk their relationship with the individual who finds the resulting conditions imposed restrictive; whereas not doing so risks the probation officer's long-term relationship with the agency. The existence of dilemmas is at the very core of the SLB discourse which recognises that part of viewing practitioners as SLBs is appreciating that

*“[t]heir roles are dichotomized; management requires them to follow a “rigid” script emphasizing organizational policies and goals, yet simultaneously, they are expected to be compassionate treating each client on a case-by-case basis”*  
(Adami, 2010, p. 3)

This dichotomy, which in the thesis has taken the forms of imbalance, tension, dilemma or misplaced expectations, is reflected in the accounts of the participants and also partly explains their attitudes to the balancing equation. On the one hand, the risk assessment and MAPPA frameworks may be well established in the relevant policy documents with goals of public protection, multi-agency rehabilitation, information sharing and understanding needs. On the other, there is also an expectation of building productive relationships with individuals to promote engagement, responsibility and reintegration which, nevertheless, cannot realistically be met due to the time-consuming and

bureaucratic requirements of the above frameworks. This sort of dilemmas in which the probation officers find themselves, the current theme has found, eventually exerts a direct impact on relationships which compromises and distorts not only their understanding of the needs and interests of the individual, but also the perceptions, implementation and prospects of human rights policies.

The brief evaluation of SLB in the context of balancing rights in probation above exhibits promising potential in understanding why practitioners deviate from established human rights notions and confirming the challenges behind this reinterpretation. Lipsky's theory provides a fitting conceptualisation because it agrees and coincides with the thesis' principal exonerating approach in that the contested attitudes observed in the data are not the probation officers' own, but rather ones that have been imposed on them;

*"SLBs' behaviour is systematically influenced by the organisational and institutional environment in which they work, rather than being primarily a response to personal preferences and interests"* (Gilson, 2015, p.4)

The participants do express their concern with the matter of human rights unawareness and admit the uncertainty and lack of confidence they experience with accurately incorporating these policies in regards to the interests of both offenders and, as the following section explores, victims too; but this does not appear to be their omission, but rather the sort of risk "*with a capital R*" that the service promotes.

The above window into the professional relationships found in MAPPA followed by the realisation of the relevant of street-level bureaucracy in the context of rights in probation constitute a revolutionary contribution of the thesis that is both directly linked to its research questions and further provides an original approach to explaining the shortcomings and imbalances in incorporating a human rights practice in probation. In terms of the research question on formation of attitudes, the participants have shed light on the underlying factors affecting these, and mention the search for shared responsibility, defensibility and accountability of decisions that they normally carry alone, how certain agencies remain habitually isolated from or intimidating in the MAPPA process, the hierarchy of punitiveness, and their role as a representative of the individual's interests in a panel of risk-averse professionalism. The MAPPA process does not exhibit a commitment to operational compliance towards human rights, and participants only recall human rights as something that "it's mentioned" and appear to reproduce the incomplete perceptions of necessity and proportionality found in the MAPPA policies. The thesis therefore has revealed how probation officers arrive to street-level understandings of human rights and their application to exactly cope with on the one hand, the lack of support, guidance, training and resources that limit their knowledge to begin with, and, on the other, the conflict of priorities, risk-aversion and professional isolation experienced in MAPPPs that have them creating own policy 'on the spot'.

### **3) Victim Rights in Probation**

This theme has shown a relative agreement among the responses regarding common areas of concern being mentioned across the sample. The participants who have contributed with different experiences or notable observations represent those who happened to encounter victims in their caseload under rare or unusual circumstances or, have received certain information or requests from victim agencies. The main areas of concern and interest the participants discuss include the Victim Liaison Unit, Victim Impact Statements, RJ, situations where the victim is known to the individual and the probation officer, exclusion zones and the conflicts that arise in cases with two or more victims.

Interestingly, the participants appear more concerned with or aware of matters of proportionality in their consideration of the victim as well as the right to private and family life of the offender because again most cases where the victim becomes a relevant consideration to them involve a known family member or partner as the victim or the potential victim.

Only one participant makes direct reference to the Victims Charter/Code so, as with the case of the offender, there does not appear to be regular use, reference or application of any victim-specific legal or policy documents seen in the literature review in dealing with victims. Participants have not mentioned any victim-specific or victim rights training either except limited instances where victim considerations might have been mentioned as part of training on a different matter which thereby appears to be following the concerns expressed in previous studies as to lack of victim-centred training. Another wider observation in regard to this theme is that the participants felt a prominent need

to explain their position and experience with victims by reference to examples from their caseload. This may indicate in the first instance the lack of consistent use of a comprehensive theoretical or policy victim framework as well as the practical complexity and challenging nature of victim considerations in probation. They further explain that most victim input comes from the VLU and the VIS as it is relatively rarely that they have direct contact with the victim, unless that is necessary or, the victim contacts the probation officer in the first place.

Melpomene notices that even though the case of the victim may have an impact on license conditions or the programme they would ask the individual to enroll in as part of their rehabilitation, she would not engage in a discussion specifically on victim impact with the offender; *“it’s not as specific as that”* especially in cases where the victim is not known, but rather raising awareness of the wider impact of their offence to the individual.

That, however indirect form of contact or knowledge of the victim, is not to say that these considerations do not affect a certain part of their decision making. What that part is concerned with is the cases where the practitioner is invited to balance the needs of the individual with the needs or requests of the victim. The exclusion zone scenarios commonly mentioned in the responses have demonstrated several aspects of that needs-orientated balancing act but, still exhibit in certain instances the overarching preoccupation of probation officers with risk;

*“in terms of human rights, we can work in a way which protects the victim absolutely and not compromise that in any way but by the same token we can make sure that the perpetrator still receives what he/she needs to receive, a good service. So, for example, there would be certain types of accommodation in terms of location that’s not going to be appropriate for them ... paths may cross, we won’t risk that whilst we have an exclusion zone; whilst we make sure that the victim’s protected we are thinking further afield we are going to avoid that, let’s move him to another AP; that AP was absolutely fine but we are going to make it even less risky completely at another AP” (Terpsichore)*

It thereby appears that even though the impact or potential harm to a known victim is taken into consideration, this may still be within the remits of risk management and a risk-averse attitude. The handling of the above case presents a novel attitude towards the two groups of interests whereby Terpsichore appreciates that placing the victim and the offender ‘not that far from each other’ is not ‘risky’ only in terms of public protection, but also to the offender: ‘that’s not going to be appropriate for them’, they would not be receiving ‘a good service’. The consideration of the victim in the scenario above reveals that it is part of ‘a good service’ to the offender that the probation officer moves them away from risky circumstances. It is thereby contended that what initially seems as a measure taken solely in the interests of protecting the victim, it may actually be for the benefit of the offender too: reduction of the risk of reoffending in the sense that Terpsichore expresses it is not a purely public protection tenet; it rather becomes one of the needs of the individual that the probation officer diverts risk, or ‘temptation’, from the individual. This equalisation of ‘good service’ to making it ‘even less risky completely’ is thus

telling of the glorification of risk within the perceptions of practitioners, and its decisive impact on their understandings of rights expectations and what constitutes needs of the individual.

Although the example above demonstrates a situation where risk almost neutralises all other considerations, the same participant explains that this may not be the case where the needs of the individual relate to diversity-related circumstances. In that situation, she interestingly recognises that “*they’ve got needs in themselves, they are a victim in another way, and they’ve got a lot of needs*”. This raises and echoes wider criminal justice questions as to whether the offender is also in some different sense a ‘victim’ either of the system who does not meet their needs or, more importantly, for present purposes, of certain attitudes or post release measures that act as second punishment or lead to rights violations. It therefore becomes noteworthy whether in similar to the above instances the probation officer finds themselves balancing the needs of two kinds of victims, i.e. actual and institutional, whilst under the impression that their work involves no victim-specific focus. This may have raised some difference of opinion among the participants; Euterpe recognises that the needs of the victim may actually not be that different from offenders’:

*“I think the victim’s needs are very similar to the offender’s, it’s a parallel really; they need accommodation, they need employment, they need finances, they need love and support, family relationships, friendship groups and, because of the offender’s behaviour, they may be stuck in something they can’t actually get out of”* (Euterpe)



She further adds that it is more often than not important to remember and take into consideration in their decision-making and risk assessments that many MAPPA individuals have themselves been victims of crime in the past or had experiences of abusive relationships with partners or even parents.

Urania, however, has expressed a different opinion on this issue and believes that even if there was an expectation of actual victim contact, that would not help with knowing the victim more or their work becoming more well-informed because the nature of victim work is so different from what they do; *“the needs of the victims are very, very different to the needs of our offenders”*. She further identifies another barrier to incorporating victim impact in their work, namely time and resources, and explains that even though there may indeed be benefit in better knowing the victim, this would still be compromised in the same way that availability of resources and time restraints limit their knowing of the offender and their needs. This draws another similarity between the two groups that once again makes them both ‘victims’ of the same systemic failures and reminds of the literature’s reference to ‘cross-over’ situations between victims and offenders which probation officers may encounter in engaging with victim contact work.

Urania adds a further challenge in considering both groups’ rights which the majority of the participants also have experienced when explaining victim-based decisions to the individual. Even though she appreciates the victim’s perspective through the VIS’s and VLU input and, the fear of victims as to what could potentially happen to them while the individual is in the community, many of her cases feel quite frustrated that certain conditions or exclusion zones

remain in place when they themselves have made evidenced progress. This becomes challenging to the practitioner considering that they cannot explain the entirety of the decision-making process and that that is a collective rather than an own decision;

*“they don’t see that risk and it’s very difficult sometimes to make that decision because you know you’re impacting another people’s lives who don’t necessarily understand what’s going on because you can’t tell them what is going on, you can’t tell them about all the other liaison you’ve had with other agencies or the intelligence you’ve got or your concerns”*

In addition, Erato sees that this situation further creates potential conflicts between probation and VLU especially in those instances where the latter’s measures and requests appears unnecessary to the aims and assessments of the former. She also notes that in her experience there have been cases where the victim has not responded to their VLU officer, but they would still act for an exclusion zone or communication preclusion on their behalf. Euterpe agrees and elaborates on the impact this attitude exerts on proportionality of exclusion zones;

*“we may not agree with the exclusion zone and I’ve never had any direct contact with the victim because we are not encouraged to because of conflict of interest but sometimes we don’t know enough ... I don’t know where they live but say they want an exclusion zone of A, B and C areas so, specific exclusion zones so I’d say town centre yes fully agree with that because it’s the accidental sighting and things like that it might cause distress, but the other two areas we*

*are saying that the next of kin actually works there or visits them so what's the purpose, what's the proportionality, why do we need it? That's what the VLU requested therefore you have to go with it"*

It follows that there may be an additional balancing act in which the probation officers may find themselves engaging considering the rights and needs of the victim, namely maintaining long-term, working relationships with the VLOs or victim support services which may be put in jeopardy if there are constant conflicts between the two. This thereby creates a cumulative effect of turbulent relationships of probation officers under MAPPA as similar challenges may be presented to them when working with social, children or other services in their supervision of individuals.

What is further concerning in the case of the VLU is that due to the limited victim-related resources at the disposal of probation officers under the case manager capacity, VLU colleagues represent the former's main official avenue to incorporating victim input in their work. It thus becomes even more vital for probation officers to maintain those professional relationships not only in the interests of securing a source of valuable information. But also, to ensure that in maintaining an as much shared, needs-based approach as possible, tensions and conflicts are less likely to arise, which is what may in turn facilitate and form the basis of a 'rights balance' between victims and offenders.

The potential conflict of interest Euterpe mentions above, and with which the literature in the area of victim rights in probation appeared considerably concerned, is reflected in the other accounts of this study's participants too. The

majority show an awareness of this potential coupled with own coping mechanisms to maintain a professional distance;

*“as a human being I’m often mostly affected by offences against the vulnerable whether the very young or the very old but because I’m aware of that I don’t allow that to get in the way of making fair judgments or treating people respectfully so I don’t let that get in the way ... because you’ve got to see that person as an individual and treat them fairly and my job is to resettle them”*  
(Clio)

The above approach serves as a reminder of what the aforementioned conflict of interest is about, namely the possibility of getting ‘too involved’ with the victim or affected by their victimisation, to the extent that it interferes with the practitioner’s duties towards and relationship with the individual. This, however, may become problematic when the extent to which this attitude of ‘professional distance’ does not conform with the Victims Code and becomes alienating towards the victim who otherwise expects the probation officer to act as a source of information and the ultimate recipient of their requests. ‘To resettle the individual’ does remain the focus of probation but this becomes ill-informed and misguided where practitioners appear persuaded that victim rights are not part of that resettlement or that these will interfere with the process.

Clio seems torn in regard to the extent that she is able to protect the victim and their interests. She initially explains that quite often she finds herself in the situation where she has to act on behalf of the victim if they are unable to assert themselves to the offender;

*“the partner says ... I’m too worried about him but she’s too scared to tell him, sometimes I have to be the bad guy and say you are not going there but I’m not telling him why because I have to protect her ... and that can be very difficult ... because what if she says a few days later ‘actually it’s ok he can move in’ and I’m thinking why are you saying that? Are you saying that because he just keeps badgering you and badgering you so he can move in?”*

Clio continues to explain though that the respectfulness towards the individual has to be extended to the victim too as long as their requests are well-informed. She refers to other instances where the victim would choose to maintain contact with the individual even where that would compromise the safety of, and thereby continuation of contact with, their children. Clio would describe the wishes of the victim in panel meetings and explain that all relevant information and risks have been communicated to the victim for them to make an informed decision; and she would personally adopt a professional attitude of respect towards the victim’s decision rather than a paternalistic imposition of their own assessment of the situation as long as the victim is aware of the consequences of their decision on them and others.

The participants share though under this theme the attitude that the interests and welfare of the child remain paramount and even more so where the child is the victim. Thalia provides a noteworthy and explicit meaning to this attitude that directly informs the purposes and balancing enquiry of the thesis. She finds that

*“we would not be looking to say you can have supervised contact with the victim because that individual might say ‘it’s my human right to have contact with my children’; but it’s also the child’s human rights that you violated so, we would not be looking to put the offender service user’s needs above the welfare of the child”*

Although similar approaches have been seen when the place of the child takes a partner, the family or the notion of public protection in general, the above situation is different because the child is the direct victim. This reveals that in balancing human rights of individuals with the needs of the victim where the victim is a child, the interests of the latter indeed remain paramount. What is also interesting in this situation is that Thalia does not appear to adopt this approach to align her assessment with that of the social services that may be involved in the case and thereby avoid potential tensions; it rather provides her own clear calibration between needs and rights. She further highlights that in considering the victim in DV circumstances, the meaning of ‘family life’ applies to and includes all members;

*“that individual might be demanding their rights to family life but clearly his pattern of behaviour is undermining family life because the partner and the children also have rights to be in a safe environment where they are not having to be exposed to such a toxic environment; because we cannot for that person’s human rights as it were, we cannot be looking at breaching those of the victim and their ex-partner or their current partner”*

Although the lack of direct reference to Article 8 reminds the street-level understandings of human rights within MAPPA, Thalia does confirm in the first instance the impossibility of disregarding the needs of the victim in offender management, but she also suggests a reformulated attitude that the literature has not considered under this context, namely that ‘family life’ – which may normally be associated with offenders rights, becomes one of the needs of the victim. The novelty is hereby introduced where the probation officer engages in balancing the right of the offender to family life with the victim’s need to a safe family environment. This observation yet again reminds the various levels upon which the rights and needs of victims and offenders may merge and co-exist, but at the same time, how these create tentative questions for practitioners to answer and in turn a pressing need for clarification of expectations.

What the above instances are also symptomatic of is the lack of support to practitioners in making these decisions, and more importantly, the lack of training on and familiarity with needs-based victim policies. Urania indeed admits that in relation to victim needs “*I’m not trained to do that ... my focus has to be [on the offender]*” which confirms the literature’s concerns about probation practitioners treating victims and offenders’ rights as two distinct categories.

Probation’s engagement with restorative justice has come as a possible remedying answer to the concerns expressed above, the literature review suggests; almost half of the POs interviewed made reference to RJ – these constitute the participants with more years of experience with the service and who have taken part in restorative programmes, most of them referring to the concept on their own and with an overall positive impression. Euterpe thinks of

herself as an avid RJ advocate and its potential in probation, but she also recognises its operational requirements;

*“I definitely believe in RJ, I think there is a place for it; there’s definitely need to be qualitative training because it’s such a sensitive area, but I think it would benefit victims, offenders and community and make it far more inclusive. I think there are merits to it, it’s not for everybody and I think it needs special assessment in terms of who is right for it and who is not”*

The reference to inclusivity is key. This echoes and implies the need for reconsideration of the three aforementioned groups of interests under a common denominator and meaning that can support an inclusive, humanist ‘rights culture’ in probation. Euterpe’s attitude above does recognise this potential in RJ’s collective approach when this is conducted under the appropriate conditions. She shares research’s observations regarding the need of specialist staff in its implementation and further wonders

*“does it fit within the ethos of probation, because it’s something that can take a long time and it’s not target-driven so, the benefits are for the community, for those individuals; how that would reflect on probation, but it should align more now because we are taking away and looking at alternatives to recall [...] can we go beyond that third warning letter”*

This alludes again to the realisation of the same cultural shift, but also reveals the restorative initiatives’ potential to make MAPPA less managerialist, impersonal, tick-boxy and, preoccupied with expediency and actuarial attitudes



to offender management and victim contact which the thesis has shown have a negative effect on human rights implementation.

Thalia expresses similar observations regarding RJ, appreciates its focus on needs, and, by reference to her own experience, elaborates on this alleged potential it exhibits in bringing practitioners closer to the victim and the interests of the rest of the stakeholders;

*“I know one case, the service user is still in custody and the RJ worker has been involved and the victim is deceased, but the widow has requested some interaction ... I haven’t been directly involved but I am aware it’s going on and the RJ worker will give me feedback ... but from what I can pick up it seemed to both parties to this particular case that they’re getting a lot out of it ... I think if it’s managed in a way that’s attentive to the needs of the victim and protects [the offender] from retribution then yes I’m all for it”*

Thalia’s account above does not only explain how through mediation, conferencing or other engaging restorative practices, probation officers may be brought physically closer to the victim, the offenders and the communities they serve as well as their respective interests and expectations. It also appears that even where the probation officer is not directly involved or is only involved remotely, the insights and outcome of the mediation may serve as another source of information in connection to the needs of the groups. This may in turn further inform the interventions, programmes and conditions of the management plan, raise the accountability and transparency of the process towards both the

victim and the offender, and substitute persistent punitive attitudes with a more restorative, needs-based and collaborative work ethic.

Erato also appreciates and welcomes the potential benefit of RJ to their work but appears more cautious and skeptical regarding the safeguards that need to be put in place before restorative interventions can be initiated. Apart from the willingness of the victim and the offender to participate and the requirement of the voluntary sector's involvement and specialism for the programmes to take place, she also explains that there are other underlying barriers that may work counterproductively in balancing rights and defeating persistent punitive attitudes. Based on her own experience, she finds that more often than not victims of serious crimes of the nature encountered in MAPPA do not wish to have any further direct contact with the individual and, on the contrary, it is rather imposition of exclusion zones that they seek. In terms of the offender, she worries that many may see RJ programmes as a 'double punishment' or an add-on to the sentence they have already served. Erato thereby believes that added to the evaluation of the victim's safeguarding and suitability to RJ to avoid secondary victimisation, part of the RJ prep-work should include the offender too and focus on showing them its purpose and what they can obtain from it. Erato makes fair points that appear to underline the importance of victim and offender preparation for RJ interventions that become even more important when these are implemented in a probation context. Lack of assessment and preparation may indeed negate RJ's potential to balance needs and raise inclusivity in offender management by leading to secondary victimisation and impressions of double punishment. Nevertheless, it remains worth noting that the participants are aware that "*it is not for everybody*" and involves dealing with

emotions they may not be familiar with assessing, but that should not, Euterpe feels, make them shy away from it in cases where the balancing benefits outweigh the risks involved.

A final area of interest that has arisen in the data but has not been adequately discussed in the literature on victims and probation is the situation where victims of the same offence request opposite things following the release of the individual. Polyhymnia provides an example on the point where the sister of a woman who was murdered by her latter's husband has requested an exclusion zone; however, his daughter who lives near her aunt and maintains a good relationship with her father has opposed this as she wants him to remain involved in her life. The probation officer therefore found herself in a situation where she had to prioritise between the two sets of victim needs in making her decision;

*“what I might do is, it seems that the impact of him being in that exclusion zone would be much more detrimental to the sister than the daughter seeing the dad at a coffee shop; so, he can still see her, they can still go for meals, when he gets his own place she can go visit him and they can still maintain that relationship, whereas if he's going to that exclusion zone we're victimizing the sister; it's how we've looked at it because the psychological impact of seeing the person who murdered your sister around your local town is going to be far greater than you having to go for a meal with your dad or go to a coffee shop”*

The above example is particularly useful in understanding the attitudes of probation officers when engaging in rights-balancing exercises; it may be

argued that in prioritising needs or conflicting interests, the comparative degree of the psychological impact the final decision might have on the victim(s) is a determinant factor. It is also noteworthy how in the above assessment the offender's position does not appear immediately in the discussion since the focus initially remains on the impact on the victims; she does not mention for example whether it would be too risky to allow any contact with the daughter in the first place.

Polyhymnia elaborates on her example and the extent they have taken the risk the individual poses in the circumstances into account, and explains that in this case the risk had to be contextualised and viewed through the lens of the victim;

*“they’ve already suffered a horrific loss and that’s why we look at exclusion zones because we think it’s not fair for someone to be constantly reminded of seeing someone else; I mean we completely support that people can be rehabilitated and that people should be able to return to the community and get on with their lives and be conscious to society, but that doesn’t need to be done at the risk of causing more harm to the victim so, it’s supporting the rehabilitative side of things whilst showing that we respect for the victim and that’s where we use things like exclusion zones”*

This explanation raises a number of observations of direct relevance to the present study. In the first instance, the above assessment confirms how there is not a magic recipe in achieving those balances between public protection and human rights, offender and victim rights, proportionality and risk priorities. It

may actually be the case that a different decisive factor is identified in the circumstances of each case which means the practitioner needs to remain flexible and open-minded in relation to what constitutes a priority and what is the meaning of 'impact' in each situation the victim and individual may find themselves in post-release. The present example though may raise an argument as to whether rights and needs considerations can ever be considered at an equal footing with risk. Despite that there is an apparent focus on the impact on the victim and their needs in the decision above, it is noteworthy that Polyhymnia does remind of their ultimate purpose of reintegration of the individual, but also succinctly reminds that 'that doesn't need to be done at the risk of causing more harm'. Her need to clarify this in her explanation of the decision taken is yet again telling of how challenging it is to divorce this sort of considerations and discussions on rights balance from the demands and expectations of risk.

This is not to say that the two should ever be looked at in isolation or to suggest that it should be about prioritising needs and rights at the expense of risk; this would be substituting one problematic attitude with another equally unproductive and ineffective. It is rather about reinstating a balance between the two, and re-establishing proportionality between aims and measures which the above example may have almost inadvertently achieved. This example indeed operates within that gap this research aims to reveal, that sensitive balance that literature and practice have left unaddressed due to a persistence on risk and an ever-growing penal populism. Polyhymnia admits that "*that was a first for us and it does almost become a question of which victim do you side with which is such a horrific question to having to ask yourself because you*

*can't possibly be in their shoes*". This confession reiterates the need for further guidance and training on the area of balancing competing interests in offender management; and crucially confirms the necessity of a rights culture in probation which can ensure that practitioners no longer find themselves in impossible situations where balancing risk with rights seems but a mirage.

The theme of victim rights above has therefore made a significant contribution in reminding that human rights apply equally to victims and offenders, and that many of the gaps in human rights practice initially identified in relation to the rights of offenders exert the same impact on the rights of victims too. This also means that as far as the research questions are concerned, unawareness of human rights law, the lack of relevant training, the lack of reference to victim policies, and systemic risk-averse attitudes altogether limit the implementation and operational compliance with victim needs and human rights. This constitutes a noteworthy contribution of the thesis in that it provides a realisation that explains how in the arena of rights, rehabilitation and restoration, the stakeholders, i.e. probation officers, offenders and victims, all appear to be victims of the wider systemic cumulative failures which continue to glorify risk and disregard the centrality of a rights balance in MAPPA.

## **Chapter Conclusion**

The documentary analysis of the selected case law has shown that the majority of cases appear to focus on Article 8, the literature review observations regarding relationships, discretion, media influences, accommodation and others are also raised in the judgements, and, interestingly, Scott's (2002) expected categorisation of human rights cases in probation can be applicable and informative of the potential sources of interferences. The observations in the first instance confirm the near impossibility of certain claims to succeed given the background of MAPPA offenders, the approaches to proportionality and legality, defensive professional decisions, Whitty's (2007) comments on judicial reluctance in the area of OM, human rights in probation go beyond matters of privacy, and the importance of the particular circumstances of the offender. Apart from the evident unfamiliarity with the relevant case law across the interview sample, the participants appear equally unaware of the HRA and have attached street-level understandings to human rights ranging from fairness, equal opportunities and discrimination to benefit, award and representation. They also appreciate the centrality of risk assessment but appear particularly concerned with the disproportionate importance the service has placed on risk at the expense of building meaningful relationships. The benefits of MAPPA in terms of expertise and sharing of responsibility are acknowledged, but the issues of priorities, communication, intimidation and risk-aversion appear to operate inhibitory to the rights of both offenders and victims. The lack of human rights training and the limited, if any, mention to human rights in MAPPP reproduce the constructed attitudes and street-level understandings identified.

## **5. CONCLUSION: SUMMARY OF FINDINGS AND RECOMMENDATIONS**

### *Summary of Findings*

#### a) Human Rights understandings of Probation Officers

This is major contribution to the area as no other research has exclusively approached probation officers to identify what is it that actually MAPPA practitioners understand as 'human rights' following the introduction of the HRA. Although some broader notions relevant to human rights, such as proportionality or family life, have been expressed in the responses of the participants on the matter, it cannot be said that a confident and HRA-driven approach in terms of theory and practice has been identified. Instead, the participants have referred to their understanding of the meaning of human rights as: fairness or being fair to the offender; proportionality or making sure everything is proportionate; the EU document; family life or liberty; being risk-aware rather than risk-averse; equal opportunities; lip-service and sketchy knowledge; a side-thing; discrimination, access and making sure the make the divide between person and behaviour (offence); making sure there is good reason for what they do; making representations; giving them what they want; 'what it says on the tin'; a deal or bargain; with rights come responsibilities. As they all do not accurately correspond to the actual meaning or in instances they do so coincidentally, the main observation is that inaccurate understandings do exist. The mere fact that some or many exist and that indeed none appears to fully describe the full scope of the HRA duties is telling of the need for more attention, training and support to be given to MAPPA practitioners.



b) The attitudes towards balancing human rights and public protection

This finding directly responds to the title of the thesis and the research question in relation to the priority attached to human rights. This finding is closely associated to the interview data, but the literature review has made significant contributions especially in regard to the background intra- and extra-organisational factors that may potentially inform, affect or distort these attitudes. It cannot be safely said that any of the attitudes that have been seen in the course of the interviews could be described as human rights-based or rights balance-based. The participants admit that 'R'isk is the central consideration and would even define, as seen above, human rights in terms of risk, i.e. being risk-aware rather than risk-averse. This should indeed not come as a surprise as it would be unlikely to find human rights-based or human rights-leaning attitudes when there is no knowledge and awareness of the HRA in the first place.

The literature review has suggested that these attitudes may be more punitive rather than rehabilitative in orientation, more crime control- rather than due process-focused, and thus more defensive in nature to avoid criticisms in instances of SFO's. Based on the sample of this study a number of these have been confirmed, such as leaning towards public protection and risk, exhibiting managerialist elements due to the actuarial and desk-bound nature of risk assessment, but in no case could the attitudes expressed by the participants be described as 'punitive'. The participants did appear concerned with the direction MAPPA and the service as a whole has taken in relation to the 'glorification' of risk assessments and limited opportunities to develop rehabilitative and meaningful relationships with offenders. The combination of the literature review

and interview data has crucially revealed that these attitudes are not the probation officers' own, but they are rather constructed in the wider socio-political and organisational context of probation.

c) The answer of street-level bureaucracy

This provides a realisation that has not been raised anywhere in the relevant literature and as such constitutes a contribution of the thesis of particular interest. The interviews have revealed that the various human rights understandings seen above and earlier in the thesis, the constructed attitudes, the impact of challenges such as limited resources and guidance, and the participants reciting instances of creating their own human rights policies 'on the spot' are all signs and symptoms of an approach to the present balancing equation that could be understood on the basis of street-level bureaucracy. The constructed attitudes and understandings that do not appear HRA-based are essentially the probation officer's coping mechanisms. They are the product of their efforts to make sense of human rights and balancing in the absence of training, support or accurate guidance on the matter.

d) Levels of balancing and alienation

Even though the focus is on the ever-elusive balance between human rights and public protection, there are actually different other levels of balancing that need to be addressed first in striking a balance between the two sets of interests. These have provided insights to all research questions of the thesis, and in particular include balancing acts between victim and offender rights, punishment and rehabilitation, the priorities of the MAPPA agencies, the need to maintain professional relationships with other agencies and working

relationships with offenders, professional distance and over-familiarity with probationers, risk assessment and contact, and service values and public expectations. Although the literature on alienation has been quite prominent and discussed earlier in the thesis, the present enquiry and data have underlined the existence of other rather concealed or even less visible levels of alienation or intimidation, such as the ones of probation officers from the service, individuals from their probation officers and the service itself, probation officers from the rest of the MAPPA agencies, practitioners from the public, and even the service as a whole from its humanist values.

e) Levels of relationships

The step further that this study has gone in respect to relationships in offender management from the perspective of human rights is two-fold. In the first instance, it argues that meaningful working relationships between offenders and probation officers provide the necessary medium through which the latter can get to know the individual, their background, who they are and appreciate their needs, risk factors and ability to change. The thesis subsequently finds that without meeting this prerequisite of constructive relationships the probation officer cannot know the person to the level where they can understand and implement in their management plans their human rights. Relationships and rights work in synergy: on the one hand, meaningful relationships can support the implementation and understanding of the HRA duties of probation officers and, on the other, a rights culture can develop a context whereby these relationships are preserved.

The second aspect of this approach contends that although the relationship between offenders and practitioner receives the most attention, it does not mean this is the only type of relationship relevant to human rights in MAPPA. In the context of this study there have been two main relationships identified, namely offender and practitioner and MAPPA professionals, but, under each of these, other sub-categories of relationships have been observed as well. They include the contact or communication of the probation officer with the individual's family, the office relationships among probation officers or between probation officers and their managers/SPO's, the relationship or expectations between probation officers and the public, the priorities and conflicts of interest or values among Probation and MAPPA, the cooperation and communication among MAPPA agencies and its implications for or consequences on the aforementioned relationships. The thesis has found that it becomes even more crucial that human rights understandings are shared and agreed among MAPPA practitioners rather than a single agency acting as a 'rights advocate'.

f) Right to representation

This does not constitute a 'human right' in the sense of the ECHR and HRA, but the thesis suggests that there may be potential to broadly express this in terms of offenders' rights. The originality of this approach implies that the understanding of this as a 'right to representation', rather than merely an option to make representations to the panel, elevates its status and invites for reconsiderations of its implications for MAPPA. The thesis found that the right to representation has a pivotal role to play in the balancing of individual and public interests in that it bears the potential to reintroduce the individual and their situation to the MAPPA process as well as the practitioners who may then be in

better position to understand their rights. This constitutes a significant contribution of the thesis because it reveals that the right to representation is linked to the development of a rights culture in probation.

#### g) The Law

The case law analysis in combination with the participants perceptions of human rights have together shown that the attitudes identified are further symptomatic of a broader gap in the area of human rights whereby it is not always recognised that the concept is tied to the HRA and the Convention rights. The thesis ascertains in as early as the Introduction that the reference to human rights in UK must go hand in hand with the ECHR and the HRA which incorporated the Convention to domestic law and created the relevant duties for public authorities. Lack of knowledge of this framework or no reference to it in perceptions of human rights cannot sustain a human rights-based practice.

The case law sample has also revealed that the majority of claims from offenders based on alleged human rights interferences by the service involve Article 8. This has also been reflected in the interview sample as well since even though none make any reference to case law, there was reference to family life and privacy which are directly associated to Article 8. This, however, in no way supports that Article 8 is the only relevant human right in the context of probation, as indeed the thesis has argued this is common misconception seen in government reports and policies which bear the potential to amplify the unawareness and relevance of human rights in offender management. The fact that instances of private and family life are more prone to be interfered with due to the nature of restrictions and conditions MAPPA

individuals are put under does not mean that there may not be other circumstances where other rights, such as Article 2 in the case of Rice's victim or property-related rights as in the case of *R*, could be interfered with.

The case law has to an extent further clarified the central to human rights notions of proportionality, necessity and legality in the context of probation, and, in that respect, evidenced the gaps and discrepancies in the understanding of the same by the participant probation officers. The thesis has found that the latter understandings remain incomplete partly because the corresponding policy and guidance documents who mention or explain these do not include the entire or legal definition of the concepts, and also due to the fact that there has been no training on these from a human rights perspective.

Apart from the above concepts, the case law analysis has also provided further insights to the instances of supervision transfer, 'family life' to be given wider scope in cases of prisoners under probation supervision to sustain their social rehabilitation, and the interrelationship between proportionality and the viability of risk management plans. Even more interestingly, the case law has revealed a judicial interpretation which recognises the impact of the interest to maintain public confidence on human rights, an acknowledgment of the potential of revival of certain cases in the media and how that may affect the interests of the victim. The present case law analysis has also noticed those instances identified in the relevant literature whereby an apparent judicial reluctance to get involved with questions of risk assessment exists which may be partly linked to the relatively limited litigation in the area and the level of technicality and expertise involved in these processes.

A notable misconception identified by the case law is the fact that Article 8 is solely a right to privacy, when, in fact, it extends to private and family life, home and correspondence. Another observation the courts make is that human rights do not appear to be consistently considered in meetings which echoes the need for review and restructuring of the MAPPA Guidance 2012. They also recognise that eradication of risk is not possible which reminds of the centrality of the original values of probation in managing risk via a humanist, rehabilitative lens. To that end, the judgments demonstrate that in the instance of Article 8, a main consideration is that the conditions are not imposed in perpetuity as otherwise this would lead to arbitrariness and eventual disproportionality between measure and purpose. This has also underlined in the words of the judiciary the need to give emphasis on the particular circumstances of individuals, and how thereby the aforementioned development of meaningful relationships becomes indispensable in maintaining proportionality and rights balance in the attitudes of probation officers.

## *Recommendations*

### (a) Practice

#### i) Training

A main recommendation is the need for a more specialised training of probation staff on the human rights discourse, theory, practice and legislation. It is reminded that following the enactment of the HRA, there is a duty on public authorities to respect the rights included in the ECHR. This means that there is an obligation on the state that this duty is observed, and that the relevant agencies that are affected and come under the definition act in a way that is compatible with the Convention. It is therefore necessary that a clearly structured framework on human rights training for probation officers is introduced and implemented that would directly address the massive gap in human rights training that currently exists.

It is further recommended that this training involves an initial explanation of rights more generally as well as more specialised Hohfeldian approaches, and, more importantly, the meaning of 'human' rights. This would thereafter be followed by ensuring familiarity and understanding of the duties, obligations and expectations under the ECHR and the HRA as well as the relationship between the two. It then remains to consider more closely both Convention rights that have proven mostly relevant to offender management such as Articles 2, 5, 8 as well as others that may potentially be raised, e.g. Articles 9 and 10.



Another particularly useful step in this type of training would be for probation officers to be given the opportunity to review court judgements of cases where individuals have brought claims against the Probation Service on grounds of human rights interferences. This would help the practitioners to identify the facts and circumstances where infringements may happen, but also to obtain a more comprehensive understanding of the judiciary's attitudes and approaches towards that balancing act between rights and public protection and thereby be in a better position to ensure that there is a form of alignment and shared understanding of expectations. This would ensure fewer unlawful human rights interferences in the first place and by extension fewer successful claims being made against the service. In view of this recommendation, it is further argued that this type of training should not be delivered in a technical fashion. A more academic approach and mode of delivery which will engage all the relevant parameters, from theory of rights to its practical applications, better underlines the centrality and importance of this area within the practice of probation. Standardised type of learning may not in all instances allow for the critical approach and engagement the topic requires;

*“the experience of being part of a real, rather than a virtual, academic community, included the opportunity to receive face-to-face, peer and facilitator support and reassurance. The benefits of being part of a supportive learning community should not be overlooked. Trainees, like newly appointed officers, ‘need to be given the chance to find out that feelings such as uncertainty, anxiety, distress, hopelessness and fear are quite normal’” (Treadwell and Mantle, 2007, p.506, citing Whitehead and Thompson, 2004, p.157).*

It is thereby even more crucial in the context of modern probation of de-professionalisation, punitiveness, alienation and managerialism to avoid introducing any initiatives, in this case through training, that in any way reinforce the trend towards professional alienation. In the interests of reconsidering the probation culture through the lens of rights and fostering relationships, it would be ironic and misplaced to attempt to accomplish that by the means of 'expediency' which have caused the aforementioned issues in the first place.

ii) Job specifications

A recommendation that has come through the participants directly and which the thesis also endorses is the need for reconsideration and redrafting of the probation officer job specifications and expectations to include references to human rights. This may indeed be a foundational step in addressing the concerns and lack of knowledge around human rights and reorienting the culture of the service by making those at the frontline of offender management aware of the needs, cornerstones and precepts of a rights balance in probation. This can subsequently have a long-term impact on enhancing the accountability, adaptability and legitimacy of the service on individual, organisational and multi-agency levels.

iii) Risk assessment tools

There is an urgent need for restructuring of the relevant tools and documents so that they can directly accommodate sections devoted to discussion of the potential human rights issues and interferences, and ways in which rights violations can be avoided in the course of the management plan or license. It is contended that this may serve as a direct way of introducing human rights

within the service and, more essentially, one that can bring rights considerations to the attention of practitioners early on in the supervision process. The introduction of such a practical initiative within an otherwise risk-focused assessment may not only enhance the transparency of decision-making, but also provide an impetus for establishing productive relationships with individuals on a more engaging and constructive human rights-level.

The above recommendation for reformulation of risk assessment in the interests of human rights compliance and supporting relationships may seem as a need for overhaul of the entire assessment process, when in fact it is small achievable steps that can have the most impact. These may initially include adding a section in OASys that would invite the assessor to directly consider the human rights implications of the case, and discuss what are the rights that may be potentially relevant in the circumstances, how these can be addressed and discussed with the individual, how can proportionality and legality of interventions be ensured, are there any previous cases which could inform the approach and ensure correct interpretation, and are the human rights victims potentially affected by any of the decisions made in the supervision of the offender. Other steps towards a more human rights-oriented approach to risk assessment could include direct reference to HRA, use of the ECHR language when referring to human rights considerations, incorporate embedded links to HRA, ECHR and summaries of relevant case law in the electronic assessment systems to remind the practitioners of the need to take these into account in their assessment, and make common practice to discuss human rights considerations with offenders, colleagues, MAPPA agencies and managers when making risk assessment decisions.

The same restructuring is needed in the MAPPA Guidance 2012 so that there is more reference and accurate explanation to human rights and the HRA as well as more productive ways to bring these references to the attention of the probation officers. This may thereby more strategically support the transition from risk-aversion to a rights culture from within the framework itself. Steps that appear necessary here and could potentially have direct impact on reintroducing the essence of human rights in MAPPA include more attention and space given to discussion of human rights in the actual MAPPA Guidance document, rewriting of the meaning of proportionality, necessity and legality to provide a more accurate definition and application; more specific guidance as to how human rights may be discussed in MAPPP among the different agencies to ensure common expectations and understandings, this could include reference to specific rights/Articles, discussion of restrictions from the angle of the actual meanings of proportionality and necessity, and ensuring that both the offender and the victim rights are addressed; restructuring of the MAPPA minutes to bring discussion of human rights at an earlier stage of the meeting so that more time and attention can be given to the relevant implications; and finally, a more active and elaborate role given to the Chair in ensuring the above are observed.

(b) Academic

i) Role of rights in offender management

In the first instance, this requires a reconsideration of the meaning and role of rights in probation and risk management. The thesis has focused on rights in the sense of the ECHR, the HRA and the duties that these create for probation

practitioners but, has also gone into the question of 'needs as rights' which presents a more inclusive and less clearly-defined approach. There is thus scope for these approaches to be further examined and developed either from the perspective of specific rights found in the Convention or, needs that are so crucial to the individual that should be expressed in terms of and adopt the status of rights. The data analysis has revealed that probation officers appear mostly concerned with the right to private and family life (Article 8) – though not always in the legalistic sense of the Convention, as it is the one that more often than not becomes relevant when license conditions are scrutinised. This was also confirmed in the documentary analysis of case law where the majority of human rights claims brought to court by offenders have been based on issues around privacy and restrictions on contact with their family and children. It follows that rights to privacy and family life are increasingly relevant to offenders under probation supervision so further research in the area from the perspective of Article 8 could further develop the foundation, basis of applicability, exceptions and best practice strategies that have been discussed in this study through the lens of the practitioner.

## ii) Role of victim rights in probation

There is a need for further academic inquiry into the understandings of victim needs by the Probation Service, and, as with the case of the offender, whether these needs should be expressed in the sense of rights in the circles of probation too. The data of this thesis has interestingly presented opinions as to how the needs of the victim are not so different from the needs of the offender but also, that the probation officers may at the same time feel they need to maintain a certain degree of professional distance from the former to avoid a

conflict of interest. This raises another opportunity for further research, i.e. whether victim rights are or should ever be considered 'somebody else's job' rather than probation's.

iii) Victim Liaison Unit

This inquiry into victim rights from the lens of probation has also revealed that more academic attention is needed into the work of the Victim Liaison Unit and whether their work is such that it promotes victim rights and, if it does, whether that understanding is one that is shared by the rest of the criminal justice agencies the unit works with.

iv) Street-level bureaucrats

The data has shown that due to this relative unawareness or gaps in the application of the human rights law, probation officers have developed their own approaches to its application which, depending on the circumstances of the case they are managing, may or may not be the one prescribed by legislative or policy documents. Street-level bureaucracy although a concept more readily found in social policy inquiries or organisations with a focus on social work (Lipsky and Hill, 1993), it has now started creeping into criminal justice agencies with the police being one that it has already been associated with (Meyers, 2007). The present consideration of attitudes towards balancing rights has exactly revealed that there is room for probation officers to be further examined through the lens of street-level bureaucracy; there thus may be scope to employ a similar examination in other probation areas of concern to ascertain whether the application of the concept can inform or develop our understanding of certain persisting challenges and shortcomings in offender management.

v) Relationships

The benefits and importance of a working relationship between offenders and practitioners is indeed one that has received considerable attention over the years and has established sound understanding of its indisputability in effectively and efficiently managing offenders in custody and the community alike. What this study finds, advocates, and recommends is not only that the literature needs to reiterate how vital that relationship is for probation officers in appreciating the needs of the individual and thereafter adopt a more rights-based approach and culture; but also, that that centrality of that relationship cannot be stressed enough and as such it should constitute the focal point of future probation policies, and interventions. Even though there is considerable attention given by the relevant literature to the relationship in question, the disproportionately increased focus on later probation developments, such as privatisation/re-nationalisation, has indirectly caused a relative neglect of the centrality of the relationship in the later probation literature. It is thus recommended that the attention and focus on that relationship needs to be re-established by way of evaluation of the ways it has been affected by the aforementioned developments.

vi) Terrorist individuals on probation

Probation officers employ special separate measures, risk assessment tools, more frequent meetings and discussion of license conditions when TACT individuals are considered. This is partly due to the grave and far-reaching consequences if anything goes wrong and the risk materialises in these cases. The need and reason for specialisation in these types of individuals though also

sits where factors like peer and family interaction, radicalisation of the children or access to resources and the community become more of an issue when compared to violent or sex offenders. These observations raise a plethora of considerations for probation which have remained largely unaddressed in the literature, including but not limited to, suitability of risk assessment tools, appreciation of the religious, political and socioeconomic underpinnings of this offending behaviour and the needs and human rights concerns that are most commonly associated in the circumstances and background of these individuals. Although terrorist offenders have with the proliferation of terrorism incidents and changes in the political background been receiving increased attention in the police and policing literature, their place and management by the probation service remains comparatively limited.

vii) Other human rights research implications

This research has in focusing on the gap between human rights and probation identified other branches and sub-categories of the problem which could benefit from further research in the interests of developing this area of need. It would be particularly interesting to examine whether the characteristics of probation officers, for example academic background, years in service, previous work experience, gender, age or ethnicity, has any impact on their attitudes or approaches to human rights. A similar exploration which the documentary analysis of case law of this study has identified could be done in relation to the judiciary and their attitudes to human rights in cases where the defendant authority is the Probation Service. Another potentially determinant area that fairs further attention in the context of human rights is the culture of Probation; the question and concept of 'organisational culture' has been extensively



researched and established in connection to the police (Reiner, 2010) where the elements of discretion, machismo, pragmatism, conservatism and others are commonly associated with police officers. It would thus be worthwhile examining whether this approach of 'organisational culture' as applicable to Probation has any effect on the attitudes of probation officers towards balancing rights with other offender management priorities. More controversially, an additional area that is more commonly associated to the police rather than probation in the literature and bears links to potential human rights violations is corruption (Punch, 2009). It is the current recommendation that there is not only a need for further research in the area of probation corruption but also, whether this has an impact on the degree of unlawful interferences of human rights in probation and the attitudes of corrupt probation officers towards rights considerations. Also, more focus and academic attention is needed on the decisions, oversight and elements employed at senior or managerial levels of probation whereby a focus is to be placed on senior probation officers and whether their attitudes to human rights has an effect on the institution's wider approach to balancing the ensuing competing interests. Another needed insight from which this area of research could greatly benefit is that of individuals under probation. The thesis has focused on probation officers and their attitudes which creates a template that can accommodate a parallel discussion of attitudes of probationers towards their human rights and, more importantly, the extent to which they believe the service has accommodated and respected their human rights. Even more interesting in this potential research opportunity would be to focus on individuals who have actually brought a complaint on human rights grounds to court and thereby evaluate their experience, expectations and relationships with practitioners before, during and after the event. Finally, as this

research has solely focused on human rights in the ECHR sense, this paves the way for similar studies to be conducted with other types or categories of rights, such as social rights, which can further contextualise and integrate the discourse of rights within the structure of probation and offender management.

## FINAL WORD

There is a remarkably sensitive balance between public protection and human rights, and probation has found itself at the forefront of striking this balance. MAPPA provides an ideal template of evaluating the challenges and implications of the balancing exercise and representing a framework that is in more need of human rights compliance due to the type of offenders for which it is destined. The thesis has placed the focus on the probation officer and what informs their attitudes towards the contentious balance in question which has further been viewed as essentially one between crime control and due process. The crucial takeaway following the literature, case law and interviews is the realisation that these attitudes are constructed: the context within which they materialise cannot be separated from their development, and as such they are not the probation officers' own. At the centre of this construction is the equally sensitive to the balancing act relationship between individuals and probation officers. Owing to the plethora of issues the latter face, ranging from caseloads to socio-political punitive expectations, the sustainability of this relationship seems like a herculean task. The understanding of the needs and rights of both offenders and victims becomes rather skewed, and it does not appear to receive the required organisational attention. In response, the probation officer inadvertently adopts street-level perceptions and implementation of human rights to cope with the cumulative systemic failures that have spoiled the true nature and implementation of human rights within the service. This redeeming stance creates an urgent need for reintroducing the concept to the practitioners and restructuring of risk assessment to establish an inclusive 'rights culture' in probation that can allow reintegration and public protection to co-exist.

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## Appendix 1: University of Wolverhampton Ethical Approval Form

### ID 117259 Single response: Ethical Approval Form (Faculty of Social Science)

<b>1. Please enter your surname and first name below. (SURNAME, FIRST NAME)</b> Kyros Hadjisergis (RIF3 PhD Student) Prof Graham Brooks (DoS)
<b>2. Please enter your University e mail address (e.g. M.Name@wlv.ac.uk)</b> [REDACTED]
<b>3. Please enter the name of your Project Supervisor, Director of Studies, or Principal Investigator.</b> Prof Graham Brooks (DoS)
<b>4. Please enter date by which a decision is required below. (Note that decisions can take up to 4 working weeks from date of submission)</b> May 2017
<b>5. Which subject area is your research / project located?</b> 1. Science (including Pharmacy) 2. Engineering & the Built Environment 3. Computing 4. Health and Wellbeing (including Psychology) 5. Education 6. Business 7. <b>Social Sciences &amp; Humanities</b> 8. Art 9. Sport
<b>6. Please select your Faculty, Department or Research Centre</b> 1. <b>Faculty of Social Science</b> 2. Faculty of the Arts 3. Faculty of Science and Engineering 4. Faculty of Education Health and Wellbeing 5. CADRE 6. CEDARE 7. Centre for Discourse and Cultural Studies 8. Engineering and Computer Science Research Centre 9. CHSCI 10. RIHS 11. Centre for Historical Research 12. RILLP 13. Centre for Research in Law 14. Centre for Transnational and Transcultural Research 15. Management Research Centre 16. RCSEP 17. Centre for Academic Practice 18. IT Services 19. Human Resources 20. Learning Information Services 21. Registry 22. Don't know 23. Other (please specify below)
<b>7. Does your research fit into any of the following security-sensitive categories? (For definition of security sensitive categories see RPU webpages (<a href="http://www.wlv.ac.uk/rpu">www.wlv.ac.uk/rpu</a>) follow links to Ethical Guidance).</b> 1. commissioned by the military 2. commissioned under an EU security call 3. involve the acquisition of security clearances 4. concerns terrorist or extreme groups 5. <b>not applicable</b>

**8. Does your research involve the storage on a computer of any records, statements or other documents that can be interpreted as promoting or endorsing terrorist acts?**

1. YES
2. NO

**9. Might your research involve the electronic transmission (eg as an email attachment) of any records or statements that can be interpreted as promoting or endorsing terrorist acts?**

1. YES
2. NO

**10. Do you agree to store electronically on a secure University file store any records or statements that can be interpreted as promoting or endorsing terrorist acts. Do you also agree to scan and upload any paper documents with the same sort of content. Access to this file store will be protected by a password unique to you. Please confirm you understand and agree to these conditions?**

1. YES I understand and agree to the conditions
2. NO (please explain below)
3. I do not understand the conditions

**11. You agree NOT to transmit electronically to any third party documents in the University secure document store?**

1. YES I agree
2. NO I don't agree

**12. Will your research involve visits to websites that might be associated with extreme, or terrorist, organisations? (for definition of extreme or terrorist organisations see RPU webpages ([www.wlv.ac.uk/rpu](http://www.wlv.ac.uk/rpu)) and follow links to Ethical Guidance.**

1. YES (Please outline which websites and why you consider this necessary)
2. NO

**13. You are advised that visits to websites that might be associated with extreme or terrorist organisations may be subject to surveillance by the police. Accessing those sites from university IP addresses might lead to police enquiries. Do you understand this risk?**

1. YES I understand
2. NO I don't understand

**14. What is the title of your project?**

Probation Officers' attitudes towards balancing public protection and Human Rights in the risk management framework of MAPPA

**15. Briefly outline your project, stating the rationale, aims, research question / hypothesis, and expected outcomes. Max 300 words.**

Probation officers on Multi Agency Public Protection Arrangements (MAPPA) are arrangements are put in place to successfully manage offenders in the community.

Probation officers are expected to focus on protecting the public whilst also protecting the rights of offenders. This is difficult as one expectation often contradicts the other.

The aim of this research is to discover how probation officers manage this contradiction whilst maintaining a commitment to human rights for all.

The expected outcome from this research is to discovered how probation officers are able to fulfill both roles without compromising public safety and/or breaching legal expectations.

**16. How will your research be conducted?**

**Describe the methods so that it can be easily understood by the ethics committee. Please ensure you clearly explain any acronyms and subject specific terminology. Max**

**300 words**

Three are three methods:

(1) Design semi-structured interview schedule with supervisor to interview probation officers working on MAPPA. Interview at least 3 different MAPPA's in West Midlands (No probation officers will be named or West Midlands region).

(2) Documentary analysis of relevant cases using WESTLAW. (NOTE: no cases used will refer to name of offender and/or victim). All cases referred to will have reached a conclusion (i.e., not ongoing). If case is under appeal it will NOT BE USED. The cases will be primarily used to highlight probation officers legal expectations to adhere to HR legislation. This is the main focus of the research.

(3) Content analysis: all interviews will be reviewed for content (i.e. to see if common themes recur).

**17. Is ethical approval required by an external agency? (e.g. NHS, company, other university, etc)**

1. **NO**

2. YES - but ethical approval has not yet been obtained

3. YES - see contact details below of person who can verify that ethical approval has been obtained)

**18. What in your view are the ethical considerations involved in this project? (e.g. confidentiality, consent, risk, physical or psychological harm, etc.) Please explain in full sentences. Do not simply list the issues. (Maximum 100) words)**

The ethical considerations are to maintain the confidentiality and anonymity of the probation officers interviewed and make sure no quote can be directly attributed to an individual. (This will be done by using a coding framework only the PhD student and supervisor are aware of).

NO OFFENDERS OF VICTIMS will be interviewed in this research.

There is perhaps potential of limited psychological harm if probation officer starts to recall a horrible case. However, before interviews all interviewees will need to sign a consent form, can withdraw at anytime and also decline that a incomplete or completed interview not be used. In addition if interviewer thinks probation officer is uncomfortable with interview it will be stopped immediately.

**19. Have participants been/will participants be, fully informed of the risks and benefits of participating and of their right to refuse participation or withdraw from the research at any time?**

1. **YES (Outline your procedures for informing participants in the space below.**

2. NO (Use the space below to explain why)

3. Not applicable - There are no participants in this study

The proposed method for interview is

- (a) the procedures for all interviews will be supplied to the interviewee prior to interview in writing (i.e., the explain to the interviewee how we intend to use data from interviews
- (b) the interview, it aims/objectives of research will also be explained to the interviewees before interviews proceed
- (c) permission to record interviews will be requested and if possible interviewees should provide their assent in writing
- (d) it will be explained to all interviewees that they can withdraw consent to be interviewed at any time before or during interview
- (e) and also request their interview not be used and deleted once completed if requested
- (f) interviewees can request transcripts of interviews and request all or specific answers not be used in final research report and/or future publications
- (g) interviewees have to be comfortable with location of the interview and should be offered choice of location (public/private)
- (h) interviewees will not be named nor organisation for which they work
- (i) if during the interview the interviewee becomes distress at any time the interview will be immediately terminated
- (j) contact all interviewees once interview completed and inform them of the data you intend to use before publication

**20. Are participants in your study going to be recruited from a potentially vulnerable group? (See RPU website ([www.wlv.ac.uk/rpu](http://www.wlv.ac.uk/rpu)) and follow link to Ethical Guidance pages for definition of vulnerable groups )**

1. YES (Describe below which groups and what measures you will take to respect their rights and safeguard them)

2. NO

**21. How will you ensure that the identity of your participants is protected (See RPU website ([www.wlv.ac.uk/rpu](http://www.wlv.ac.uk/rpu)) and follow link to Ethical Guidance pages for guidance on anonymity)**

Design a coded framework based on numerical characters that only PhD student and supervisor are aware of.

Delete all data once research is complete

Ensure anonymity using interview schedule method explained earlier.

**22. How will you ensure that data remains confidential ((See RPU website ([www.wlv.ac.uk/rpu](http://www.wlv.ac.uk/rpu)) and follow link to Ethical Guidance pages for definition of confidentiality)**

All data will be passed onto the PhD supervisor once analysed by PhD student and kept on safe secure computer in university.

NO DATA is to be kept on a LAPTOP that might be used outside of the university.

**23. How will you store your data during and after the project? (See RPU website ([www.wlv.ac.uk/rpu](http://www.wlv.ac.uk/rpu)) and follow link to Ethical Guidance pages for definition of and guidance on data protection and storage).**

All data to be stored on university computer (see earlier)

Back to [list of responses](#).

## Appendix 2: University of Wolverhampton Ethical Approval confirmation

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### Ethical Approval ID [REDACTED]

3 messages

Wed, Mar 22, 2017 at 11:46 AM

To: [REDACTED]  
Cc: [REDACTED]

Dear Kyros (PhD Student No. [REDACTED])

I am pleased to inform you that your application for Ethical Approval ID [REDACTED] attached has been APPROVED on 20<sup>th</sup> March 2017.

Regards [REDACTED]

[REDACTED]

Faculty Research Administrator  
University of Wolverhampton Business School  
Faculty of Social Sciences  
MH Building, Room MH211

T: +44 ([REDACTED])



ID [REDACTED] Kyros Hadjisergis Ethics Application Approved.pdf  
161K

Kyros Hadjisergis <k.hadjisergis@gmail.com>

Wed, Mar 22, 2017 at 1:58 PM

## Appendix 3: Research Project Access Application to HMPPS

### Research Project Application

#### **Section 1 – Key Details**

Full Title Of Research Project:	Probation Officers' attitudes towards balancing public protection and human rights in the risk management framework of MAPPA		
Date Of Application:	25/08/2017		
Start Date:	01/10/2016		
Data Collection From:	tbc	Data Collection To:	tbc
Report Completion Date:	01/02/2020		

#### ***Researchers***

Lead Researcher Name:	Mr Kyros Hadjisergis	Post: Researcher in Law		Employer:	n/a
Address:					



Tel No:		Email:	

Are you applying as an academic student?:	Yes
Are you a HMPPS psychologist in training undertaking this research for a Chartership exemplar?	No

Academic Supervisor Name (if applicable):	Prof Graham Brooks	Post: Prof in Criminology and Course Leader Cybercrime MSc	Employer: University of Wolverhampton
Address:	University of Wolverhampton Faculty of Social Sciences Mary Seacole Building Nursery Street Wolverhampton WV1 1ADY		
Tel No:		Email:	

Additional Researcher Name (if applicable):		Post:		Employer:	
Address:					
Tel No:		Email:			

Additional Researcher Name (if applicable):		Post:		Employer:	
Address:					
Tel No:		Email:			

Additional Researcher Name (if applicable):		Post:		Employer:	
Address:					
Tel No:		Email:			

Supported By HMPPS HQ:	No	HMPPS HQ Contact:	
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Supported By Community Rehabilitation Company:	No	Probation Trust Contact:	
Supported By Private Sector Prison:	No	Private Sector Prison Contact:	
Supported By Ministry of Justice:	No	MoJ Contact:	
Supported By Other Government Dept:	No	Supporting Other Gov Dept Specified:	
Supported By Other:	Yes	Supporting Other Specified:	University of Wolverhampton
Funded By HMPPS HQ:	No	Funded By HMPPS HQ Amount:	
Funded By Community Rehabilitation Company:	No		
Funded By Private Sector Prison:	No		
Funded By Ministry of Justice:	No		
Funded By Other Government Dept:	No	Funding Other Gov Dept Specified:	

Funded By Other:	Yes	Funding By Other Specified:	University of Wolverhampton
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HMPPS Project Lead Name (if applicable):		HMPPS Project Lead Post:	
HMPPS Project Lead Directorate:		HMPPS Project Lead Group:	
HMPPS Project Lead Telephone No:		HMPPS Project Lead Email:	

HMPPS Most Relevant Business Priority (please select one):	<p>Delivering the punishment and order of courts</p> <p><b>Security, safety and public Protection</b></p> <p>Reducing reoffending</p> <p>Improving efficiency and reducing costs</p>
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## **Section 2 – Aims & Objectives**

Brief description of research (Max 300 words using language easily	<p>The research specifically focuses on the probation officers and their attitudes towards balancing human rights and public protection.</p> <p>We are primarily concerned with the practitioners working under the framework of Multi-Agency</p>
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<p>understood by a lay person):</p>	<p>Public Protection Arrangements in England.</p> <p>Following the introduction of MAPPA in 2001, there have been cases brought against various NOMS agencies on the grounds of human rights violations of the offender. Other cases have also highlighted that despite the aims to reduce reoffending and enhance public protection serious further offences continue to be reported. The Rice case demonstrated that balancing public protection and human rights in offender management is a contentious subject which can have wider political, social, criminological, legal and operational implications. This project advocates that understanding human rights is to recognise that the rights of victims and offenders and public protection are embedded within the core principles of probation. Further, it looks into the current risk assessment processes, their practical implications and whether they provide a suitable fit for the aims and purposes of offender management. In terms of victim considerations, the study suggests that recent victim movements have created a momentum in relation to victim participation in the CJP. This bears implications for the place and value of victims in the probation service and raises questions as to the</p>
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	<p>prospects of Restorative Justice. Furthermore, this project recognises a need for the MAPPA procedure to take a more collective approach in safeguarding human rights; MAPPA agencies should make the application of human rights their shared professional responsibility, and should avoid the perusal of individual agendas. Lastly, 'human rights protection' should become an established feature at every level of probation practice.</p>
Aim of the research	<p>The primary aim of the research in question is to highlight the human rights expectations, challenges and implications within the practice of probation officers in England and Wales. This will lead to an increase in legitimate practice, which could ensure that any future cases brought against the Probation Service are unlikely to succeed. It is also the intent here to show that the tensions between human rights and public protection is a prime example of how a CJS must recognise that Due Process and Crime Control are two ends of a spectrum. Identifying those tensions and their socio-political causes consists a primary objective of the project and one that directly informs the purpose of working towards a rights balance</p>

	<p>among victims, offenders and the public.</p> <p>Ultimately, there remains a need for a combined public protection and human rights political and theoretical discourse, which explores if and how the two can co-exist. It is the above need that the project addresses and aims to provide a resolution for so that a human rights culture can develop in the new probation infrastructure.</p>
<p>What are the primary research questions (and/or hypotheses)?</p>	<p>Although this study focuses on National Probation Service (NPS) practitioners, the study might be of interest to Community Rehabilitation Companies (CRC) managing low and medium risk of harm offenders. The research will therefore address:</p> <p>(a) To what extent do Probation Officers take regard of human rights legislation, when administering Licence conditions, restrictions and other controls upon offenders with whom they manage in the community? (b) To what extent do Probation Officers prioritise the human rights of offenders with whom they manage in the community? (c) To what extent does the National Probation Service ensure operational compliance towards human rights legislation? (d) Are Probation Officers aware of human rights legislation and how it might be significant to their</p>

	<p>management of offenders? (e) Are Probation Officers aware of human rights case law and how it might be relevant to their management of offenders? (f) What attitudes do Probation Officers have towards a human rights based practice? (g) To what extent have Probation practitioners received adequate human rights training, pre or post qualification?</p>
<p>What are the potential benefits of the research to HMPPS policy/business?</p> <p>How does the research link to HMPPS business priorities? How could the findings be operationalised?</p>	<p>The research's aims are directly linked to HMPPS priorities. The relevant agency delivers the orders of the courts by providing for probation and other services, providing information to victims, and for ensuring the whole system focuses on rehabilitating offenders and reforming communities. The project becomes beneficial to HMPPS as it examines the legal expectations placed on probation officers, explores the practical implications of victim issues through a restorative lens, and suggests a rights culture that can reduce reoffending and lead to a more transparent and efficient probation service. HMPPS has a clear and dedicated focus on reforming offenders and protecting the public while ensuring best value for money from public resources. It strengthens the frontline and empowers those who work</p>



	<p>closely with victims and offenders. The current study has the potential of minimising the expenditure of public resources exactly by ensuring that less cases based on human rights violations are brought to court. Indeed, the focus on the probation officers' attitudes rather than the service as a whole does strengthen the frontline of probation since it can contribute towards a more accountable work ethic.</p>
<p>What are the potential benefits of the research to academic knowledge in the field of study?</p>	<p>The research has potential benefits in terms of advancing the knowledge in the fields of probation as well as CJS more broadly. It intends to highlight:</p> <p>(a) A potential lack of human rights base practice within the Probation Service, (b) A potential gap in probation training which must be filled with developing human rights best practice and staff knowledge of legislation and up to date case law, (c) A disproportionate focus on efficiency in delivering public protection, to the detriment of offender human rights and human rights best practice, (d) Without the knowledge of human rights legislation, practitioners who impose restrictions and controls upon offenders managed at MAPPA are likely to administer conditions which contravene human rights, (e)</p>

	<p>The difficulties practitioners face in applying human rights to offenders managed at MAPPA. Such difficulties might relate to matters of diversity or ethical dilemmas, (f) The need to review policy and procedure to make it consistent with a human rights best practice approach.</p>
<p>What previous research has been conducted in this area?</p>	<p>Previous research has primarily focused on direct criticisms to the probation service, its resource and staff insufficiencies, lack of transparency and accountability and inability to sufficiently reduce recidivism. Although contact with probation officers has been seen in some research designs, these have rather explored how they maintain contact with offenders and in what ways they ensure the protection of the public. More often than not research in the area is directed and based on pre-sentence reports and documentary, statistical or archival data. Research based on opinions and perceptions of those who actually work in the environment of probation is more limited and thus less developed. Finally, many studies choose to focus on how a specific group of offenders is managed by the NPS and how for example the service has neglected the special circumstances</p>

	of mentally disordered offenders. This, however, still leaves the field in need of a transformative review in terms of the co-existence of public protection and human rights.
What are the main limitations of the research proposed?	The research is academic and as such limited in the first instance by word count, format, duration and other university requirements that have to be respected. This impacts on its scope which cannot extend beyond what the prescribed word and timeframe limits allow. It is proposed that a limited number of interviews with probation officers working under MAPPA and within a chosen county can be conducted. This means that the results and subsequent conclusions and recommendations cannot be generalised in such a way as to represent the whole of probation service or indeed totality of probation officers working under MAPPA across the country.

### **Section 3 – Proposed Methodology**

Methodologies to be used:

Literature Review:	Yes
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Rapid evidence assessment/systematic review:	Yes
Action research:	No
Case studies:	No
Process evaluation:	Yes
Impact evaluation:	No
Economic evaluation:	No
Other:	No
Other Method Specified:	
Please summarise your proposed design and methodology (including details on sampling and sample sizes, identifying/recruiting respondents, likely response rates, testing/validation of tools/instruments)	The project adopts a qualitative research design. We are concerned here with those sources that can best inform of the legal expectations, attitudes and perceptions of probation officers towards the tensions and challenges discussed in previous sections. The study employs three methods in answering its research questions, namely semi-structured interviews with probation officers working under MAPPA in West Midlands, content analysis of the interview data, and documentary analysis of case law. It is contented that the more personal, direct element gained through the interviews in combination with the more legalistic, documentary one from cases presents the

	<p>most holistic methodological approach for our research purposes. In recruiting practitioners, the sampling method hereby suggested is a combination of the purposive and convenience types. Although there are certain ‘desirable’ professional characteristics that would best respond to the research questions, e.g. work with victims, participation in special training, specific academic background etc., we do not wish to limit the potential sample in such a way. It is appreciated that due to time and work restraints, many practitioners may not be available at the time when the data needs to be collected so a more flexible, convenient sampling approach is considered. In terms of response rates, it is expected that due to the relatively small number of participants, the flexibility described above and the beneficial nature of the research, no response issues will arise. As far as the case law is concerned, we focus on concluded cases post-2001 (introduction of MAPPA).</p>
<p>Please describe the proposed methods of analysis (quantitative and/or qualitative):</p>	<p>Given that a comprehensive literature review has been done, we are not aiming through content analysis of the interview data to identify what these recurring ideas/themes are. The</p>

	<p>aim is rather to formulate categories by reference to the existing theory and thereby further develop the observations and arguments initially expressed in the literature.</p> <p>The four themes we have been following throughout the research, i.e. risk, public protection, victims and crime control/due process, also reflect the type of categorisation and coding the content analysis is based on.</p> <p>The rationale is that, although the interviewees may not explicitly refer to those terms, the concepts are themselves broadly defined so that certain terms, phrases or events can be assigned to the corresponding theme. Where the case analysis is concerned, a process is followed whereby the facts and decisions of the relevant cases are presented and discussed.</p> <p>The case reports are thus treated here as documents providing a reflection of the legal reality of probation. This can assist in better appreciating the legal expectations in terms of human rights, what the most frequently used legal and policy instruments are and also how the courts interpret, understand and apply the guidelines of those instruments.</p>
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<p>What are the resource implications (e.g. anticipated demands on staff time, office requirements, demands on data providers etc)?</p>	<p>It is assumed that the only method of the research posing some resource implications is the semi-structured interviews. There is no requirement to come in contact with any data providers as the project is not interested in analysing any documents kept by the probation service or its practitioners. The relevant case law reports are drawn from online legal databases such as Westlaw, access to which is granted through the university credentials of the researcher. Where necessary for the purposes of cross reference of results, Lexis Nexis may also be used. Both legal websites, provide detailed information and access to case law, journals, and legislative instruments. This means that as search tools both databases are time-efficient, reliable, practice-focused and do not require any payment for downloading and/or printing the material provided. Due to the semi-structured type of interviews, the variability of experience of probation officers with victims and offenders and the prospect of probing questions is hard to precisely describe the anticipated demands on staff time. However, the interview schedule/questionnaire will aim to limit the</p>
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	<p>duration of each interview to approximately one hour consisting of about twenty core questions. It is also noted that the interviewer is flexible to meet the interviewees at a time and office or other location of their convenience. If face-to-face interview with some probation officers proves difficult or burdensome in any way, the prospect of telephone interviews will also be considered. It is worth noting that some geographical dispersion may be noticed according to access to and availability of three different MAPPAs within the West Midlands. But then the dispersion is not expected to be such that resource considerations could arise given the relatively close distribution of the Probation Trusts across the county.</p>
<p>What are the main methodological and/or operational risks and how will these be mitigated? Any conflicts of interest?</p>	<p>Although a large sample size can potentially provide more reliable and representative of the population results, it can operate inhibitory in relation to the depth of analysis. Given the time and resource limitations especially in large scale projects there is the concern that valuable time will be devoted in managing the extensive data instead of achieving the required level of analysis. Another challenge is the possibility of bias. Due to the existing</p>



theory and criticisms, the analyst may inadvertently lean towards a certain side of that theory, prioritise certain expressions over others or even miss certain relevant remarks of the interviewees simply because they fall outside the remit of the pre-determined codes. Further, it is also assumed that by the time of the interview the probation officers participating in the study are already familiar with the aims of the project and might get cues in answering in a specific way. This means that the generated data may contain answers that do not accurately represent the situation, experience and by extension real attitudes of the practitioners. The above however do not render the method unworkable or detrimental to our aims. Usually issues of bias can be tackled by an audit trail process while other checks, such as use of intercoders, can ensure that the coding process remains accurate and objective throughout. Moreover, an open-mindedness and reflexivity on the part of the analyst are also necessary here. It is reminded that the project accepts that despite the comprehensive literature review of academic and legal opinion, the practice and process of

	<p>criminal justice is a multidimensional entity which cannot always be captured holistically in paper. As such, the contact with professionals is on the one hand expected to compliment and extend the existing perceptions but it may as well provide contradictions and perspectives which have not been anticipated or previously expressed.</p>
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#### **Section 4 – Access To Establishments & Trusts**

Requires Access To Prisons?:	No	
List of Prisons To Be Accessed (please select):	Contracted	<p>Altcourse</p> <p>Ashfield</p> <p>Birmingham</p> <p>Bronzefield</p> <p>Doncaster</p> <p>Dovegate</p> <p>Forest Bank</p> <p>Lowdham Grange</p> <p>Northumberland</p> <p>Oakwood</p> <p>Peterborough</p> <p>Rye Hill</p> <p>Thameside</p>

	East	Bedford Bure Highpoint Hollesley Bay Lincoln Littlehey North Sea Camp Norwich Stocken Warren Hill Wayland
	High Security	Belmarsh Frankland Full Sutton Long Lartin Manchester Wakefield Whitemoor Woodhill
	Kent, Sussex and Essex	Blantyre House Chelmsford Dover Elmley Ford Lewes Maidstone

		Rochester
		Standford Hill
		Swaleside
	London &	Aylesbury
	Thames	Brixton
	Valley	Bullington
		Coldingley
		Grendon / Spring Hill
		High Down
		Huntercombe
		Isis
		Mount
		Onley
		Pentonville
		Wandsworth
		Wormwood Scrubs
	North East &	Deerbolt
	Yorkshire	Durham
		Hatfield
		Holme House
		Hull
		Humber
		Kirklevington Grange
		Leeds
		Lindholme
		Moorland

		Wealstun
	North West	Buckley Hall Garth Haverigg Hindley Kennet Kirkham Lancaster Farms Liverpool Preston Risley Thorn Cross Wymott
	South West & the IRCs	Bristol Channings Wood Dartmoor Erlestoke Exeter Guys Marsh Haslar Isle of Wight Leyhill Morton Hall Portland Verne Winchester

	The Midlands	Brinsford Featherstone Gartree Glen Parva Hewell Leicester Nottingham Ranby Stafford Stoke Heath Sudbury Swinfen Hall Whatton
	Wales	Berwyn Cardiff Parc Swansea Usk / Prescoed
	Women	Askham Grange Downview Drake Hall East Sutton Park Eastwood Park Foston Hall Low Newton New Hall

		Send Styal
	Young People	Cookham Wood Feltham Medway STC Werrington Wetherby
Requires Access to the National Probation Service?:	Yes	
List of National Probation Service Divisions To Be Accessed (please select):	NPS London Division <b>NPS Midlands Division</b> NPS North East Division NPS North West Division NPS South East and Eastern Division NPS South West and South Central Division NPS Wales Division	
Requires Access to Community Rehabilitation Companies?:	No	
List of Community Rehabilitation Companies to be Accessed (please select):	Bedfordshire, Cambridgeshire, Hertfordshire and Northamptonshire CRC Bristol, Gloucestershire, Somerset and Wiltshire CRC Cheshire and Greater Manchester CRC Cumbria and Lancashire CRC	

	<p>Derbyshire, Leicestershire Nottinghamshire and Rutland CRC</p> <p>Dorset, Devon and Cornwall CRC</p> <p>Durham Tees Valley CRC</p> <p>Essex CRC</p> <p>Hampshire and Isle of Wight CRC</p> <p>Humberside, Lincolnshire and North Yorkshire CRC</p> <p>Kent, Surrey and Sussex CRC</p> <p>London CRC</p> <p>Merseyside CRC</p> <p>Norfolk and Suffolk CRC</p> <p>Northumbria CRC</p> <p>South Yorkshire CRC</p> <p>Staffordshire and West Midlands CRC</p> <p>Thames Valley CRC</p> <p>Wales CRC</p> <p>Warwickshire and West Mercia CRC</p> <p>West Yorkshire CRC</p>
Requires Access to Young Offenders' Institutions:	No
Requires Access to Youth Offending Teams/Secure Training Centres/	No



Secure Children's Homes	
Does your research require access to any high security prison establishments:	No
Please state your reasons for choosing the selected establishments/NPS Divisions/CRCs:	<ul style="list-style-type: none"> <li>- Midlands Division comprises the second largest NPS branch/trust in the UK</li> <li>- Statistics within the Midlands have shown offending rates and type of offenders/offences that the research is interested in</li> <li>- Extensive MAPPA network</li> <li>- The Midlands Division has undertaken considerable work with victims of crime which can be informative to the purposes of the research</li> <li>- Practical and Economic reasons have also influenced the relevant decision, such as location of the researcher and the academic establishment, i.e. easier access to the NPS Trusts.</li> </ul>
Have any establishments/NPS Divisions/CRCs already been approached about this research? If so, provide details:	No

<p>Please list any equipment which you are intending to use within the establishments/NPS Divisions/CRCs:</p>	<p>Voice Recording device during interviews, only if the interviewees agree to it</p>
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### **Section 5 – Data Protection**

Does the proposed study involve the collection/use of personal data?	No (If Yes please complete the questions below)
What is your organisation's Data Protection Notification Number?	
Does your Data Protection Notification allow for offence-related information of individuals to be stored within your organisation for research purposes?	
Explain how you will hold the personal data in order to ensure its security during the study:	

How will you ensure that any findings do not reveal information about single individuals?	
How long will the data be retained for?	
How will you dispose of the data?	
Please provide details on any access required to existing data sources (and whether access to this data has already been sought and from whom):	

## **Section 6 – Research Ethics**

What are the ethical considerations relevant to this study and how have you addressed them	I, the researcher, will have taken the steps outlined below in ensuring ethical compliance in relation to conducting interviews: I explain any possible benefits to the participant from taking
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<p>(including obtaining of informed consent, safety of participants/researchers, ensuring anonymity/confidentiality?)</p>	<p>part in the study. I also focus on the wider benefits of the study findings in terms of future benefits to understanding practice. I do not intend to exaggerate the possible benefits to the particular participant during the course of the study as this could be seen as coercive. I also explain any potential risks for participants that may occur if they decide to take part. I explain how the data my participants provide will be stored and how their data will be presented in my write- up. A discussion will be made on anonymity, confidentiality, security of storage and removal of identifying information as the main considerations. I also explain that if anything is raised during the interview that indicates that either the participant or someone else is at risk of harm, then these concerns will have to be taken further. I further explain where they will be taken to and whom the information will potentially be shared with. I tell the participants how the findings will be disseminated, and when and where are the results likely to be published. I expect to provide a lay summary of my findings to participants. I also advise as to where they can obtain a copy of the published results or otherwise access the</p>
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	<p>lay summary. I give details of who the participant (e.g. my supervisory team) can contact if they have any questions or complaints about the method, conduct of the research etc.</p> <p>A brief summary of the information sheet will also be given to the participants before the start of the interview in order to ensure [they] are fully informed. In terms of recording of interviews, permission will be sought prior to the interview with accompanying information sheet explaining means of recording, purpose and handling of recordings. Written consent from participants will also be sought. Consent forms will be circulated to participants including right to withdraw at any time. Interviewees can at any time request the interview to be deleted or not used in final report or publications. Interviewees will be consulted prior to the interview as to their preferred location and time. The participants will remain anonymous throughout the course of the study as well as in any data analysis and subsequent publications. It will be made sure that the interviewees feel comfortable and valued throughout the course of the interview. If at any time during the interview the participant becomes distressed, emotional, or angry they</p>
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	<p>will be given time to relax and asked if they wish to continue. Any decision they reach will be respected. If the interviewee remains distressed the interview will be immediately terminated.</p> <p>Once the interviews are completed and the data is transcribed and analysed, all interviewees will be contacted individually and be informed of the way the final data will be used/reviewed/published. Ethical approval has been granted from the University.</p>
<p>Has a relevant Ethics Committee approved the research?</p>	<p>Yes</p> <p>University of Wolverhampton Ethics Committee</p> <p>The approval was granted in March 2017.</p>

## **Section 7 – Dissemination**

<p>When will the research summary and project review form be made available for HMPPS?</p>	<p>The doctoral course of which the research forms part has a minimum duration of three and a maximum of four years. I anticipate that by January 2020 all my responsibilities to the course above shall be met and I would thus be in a position to produce the relevant research summary and project review shortly after. I will ensure that before I make available the final summary and review to the HMPPS all the requirements of</p>
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	<p>the course and project have been met and relevant examinations have finished and passed successfully, so that the relevant documents represent the final and completed state of the research.</p>
<p>How else will the results of the research be disseminated (e.g. article, book, thesis etc)?</p>	<p>As mentioned earlier, the research represents a primarily academic inquiry as part of a doctoral course in law. At this stage of the study dissemination does not form a central consideration for our purposes and may be discussed when data collection and findings analysis are completed. Suffice it here to say though that the research will be presented as a doctoral thesis and will be normally available on the relevant university databases and Ethos. It is noted that should any later decisions be made in terms of dissemination, these will be in full compliance with current dissemination of research requirements and guidelines. In that case, the researcher will also inform the HMPPS of the relevant changes and developments before any new dissemination is realised.</p>

## **Section 8 – Declaration**

Has agreed to declaration statement?	Yes
Agreed By:	Kyros Hadjisergis
Agreement Date:	25/08/2017



## Appendix 4: HMPSS Confirmation and notification of interviewee recruitment

### MAPPA Interviews

Wed 05/09/2018 12:22

To: Hadjisergis, Kyros [REDACTED]

Hi Kyros,

[REDACTED] has asked me to email you in regard to MAPPA interviews. We have some staff willing to be interviewed, I have listed their names and email addresses below. Could you send them an email to arrange a phone call to introduce yourself and the research and make arrangements to do the interviews?

[REDACTED]  
**National Probation Service | Stakeholder Engagement**

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This e-mail and any attachments is intended only for the attention of the addressee(s). Its unauthorised use, disclosure, storage or copying is not permitted. If you are not the intended recipient, please destroy all copies and inform the sender by return e-mail. Internet e-mail is not a secure medium. Any reply to this message could be intercepted and read by someone else. Please bear that in mind when deciding whether to send material in response to this message by e-mail. This e-mail (whether you are the sender or the recipient) may be monitored, recorded and retained by the Ministry of Justice. Monitoring / blocking software may be used, and e-mail content may be read at any time. You have a responsibility to ensure laws are not broken when composing or forwarding e-mails and their contents.

N.B. Certain parts of the above correspondence have been omitted due to confidentiality restrictions.

## Appendix 5: Participant Consent Form

### **Consent Form**

**Title of Project:** Probation Officers' attitudes towards balancing public protection and human rights in the risk management framework of MAPPA

**Name of Researcher:** Kyros Hadjisergis

This interview forms part of a research project conducted at the University of Wolverhampton for the completion of a PhD course in Law. The research will investigate the attitudes of Probation Officers towards balancing public protection and human rights in the risk management framework of MAPPA.

All interviews will be conducted with the utmost responsibility and respect for the individuals who agree to take part.

Participants have the absolute right to decline to take part in the research, to refuse to answer any individual question(s), or to withdraw their information at a later stage without having to explain their reasons. Researchers will explain the purpose of the research to all participants.

Names of participants will not be disclosed to any third party, and anonymity will be preserved in any written work.

**Participant(s):**

I, the undersigned, agree to take part in this research for the project listed above. The purpose of the research has been explained to me, and I understand that I have the right to decline to answer individual questions, or to withdraw my information from the research at any time.

I understand that my name will not be disclosed to any third party, or in any publications or reports arising from this project.

**Please initial the boxes below**

1. I confirm that I have read and understood the information sheets attached for the above study and have had the opportunity to ask questions. ☐
2. I understand that my participation is voluntary and that I am free to withdraw at any time, without giving any reason, and without my legal rights being affected. ☐
3. I understand that my data will be stored securely and confidentially and that I will not be identifiable in any report or publication. ☐
4. I agree to the interview being recorded by means of a voice recording device ☐

5. I agree to take part in the above study.

☐

.....	.....	.....
Name	Date	Signature

Kyros Hadjisergis

Name of person taking consent	Date	Signature
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Kyros Hadjisergis

Researcher	Date	Signature
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## Appendix 6: Letters to participants

### i) Invitation Letter

Dear .....

I am writing to invite you to participate in a research project, which I am conducting as part of a PhD course in Law at the University of Wolverhampton. I enclose an information sheet, which explains the title and aims of the project.

**If you are willing to be interviewed, the interview would take between 45 and 60 minutes. Anything you say would be totally confidential and any notes made as a result of the interview would be destroyed afterwards. The interview would take place (participant's preferred location) at a time that is convenient to yourself. A report will be written of the findings and numbers/letters will replace all names so that you cannot be identified. Reference to specific MAPPA's under which prospective participants work will not be made either.**

Please review all the information included in this email and should you have any questions before agreeing to participation and/or signing the consent forms please do not hesitate to contact me.

If you feel that you would like to be interviewed, please indicate on the attached consent forms, and send the completed documents back to the email address

above at your earliest convenience. If you would prefer not to be involved, please ignore the information included here and let me know of your decision as soon as possible.

Yours sincerely,

Kyros Hadjisergis

## **ii) Ethical Compliance notification**

### Ethical Compliance

The researcher has taken the steps outlined below in ensuring ethical compliance in relation to conducting interviews:

- I explain any possible benefits to the participant from taking part in the study. I also focus on the wider benefits of the study findings in terms of future benefits to understanding practice. I do not intend to exaggerate the possible benefits to the particular participant during the course of the study, e.g. by saying they will be given extra attention, as this could be seen as coercive.
- I also explain any potential risks for participants that may occur if they decide to take part, which does not appear to be the case at the current stage.
- I explain how the data my participants provide will be stored and how their data will be presented in my write up. An assurance will be made on anonymity, confidentiality, security of storage and removal of identifying information.
- I also explain that if anything is raised during the interview that indicates that either the participant or someone else is at risk of harm, then these

concerns will have to be taken further. I further explain where they will be taken to and whom the information will potentially be shared with.

- I tell the participants how the findings will be disseminated as well as when and where are the results likely to be published. I expect to provide a lay summary of my findings to participants. I also advise as to where they can obtain a copy of the published results, if applicable, or otherwise access the lay summary.
- I give details of who the participant (e.g. my supervisory team) can contact if they have any questions or complaints about the method, conduct of the research etc.
- A brief summary of the information sheet will also be given to the participants before the start of the interview in order to ensure they are fully informed.
- In terms of recording of interviews, permission will be sought prior to the interview with accompanying information sheet explaining means of recording. Written consent from participants will also be sought.
- Consent forms will be circulated to participants including right to withdraw at any time.
- Interviewees can at any time request the interview to be deleted or not used in final report or publications



- Interviewees will be consulted prior to the interview as to their preferred location and time
- The participants will remain anonymous throughout the course of the study as well as in any data analysis and subsequent publications
- It will be made sure that the interviewees feel comfortable and valued throughout the course of the interview
- If at any time during the interview the participant becomes distressed, emotional, or angry they will be given time to relax and asked if they wish to continue with interview or not. Any decision they reach will be respected. If the interviewee remains distressed the interview will be immediately terminated
- Once the interviews are completed and the data is transcribed and analysed, all interviewees will be contacted individually and be informed of the way the final data will be used/reviewed/published.

### iii) Research Information Sheet

#### **RESEARCH INFORMATION SHEET TO** **INTERVIEW PARTICIPANTS**

##### ***“Probation Officers’ attitudes towards balancing public protection and human rights in the risk management framework of MAPPA”***

- What the research is about

The research focuses on probation officers and their attitudes towards balancing human rights and public protection. We are primarily concerned with the practitioners working under the framework of Multi-Agency Public Protection Arrangements in England. Following the introduction of MAPPA in 2001, there have been cases brought against various NOMS agencies on the grounds of human rights violations. Other cases have also highlighted that despite the aims to reduce reoffending and enhance public protection serious further offences continue to be reported. This project advocates that understanding human rights is to recognise that the rights of victims and offenders and public protection are embedded within the core principles of probation. Further, it looks into the current risk assessment processes, their practical implications and whether they provide a suitable fit for the aims and purposes of human rights-orientated offender management. In terms of victim considerations, the study suggests that recent victim movements have created a momentum in relation to victim participation in the CJP. This bears implications for the place and role of victims in the probation process and raises questions as to the

extent that the interest of both victims and offenders can be balanced. This project ultimately recognises a need for the MAPPA procedure to take a more collective approach in safeguarding human rights.

- Context and rationale

Naomi Bryant was murdered by Anthony Rice while he was on Licence from prison in 2005. Her Majesty's Inspectorate of Probation (HMIP) conducted a Serious Further Offence (SFO) case review which concluded that those responsible for managing Anthony Rice prioritised his human rights instead of public protection (Her Majesty's Inspectorate of Probation [HMIP], 2006, p.2). However, a subsequent report from the Joint Committee of Human Rights (JCHR) challenged HMIP's findings, arguing that human rights were used as a scapegoat for institutional failings (Joint Committee of Human Rights [JCHR], 2006, p.16). The Rice case demonstrated that balancing public protection and human rights in offender management is a contentious subject which can have wider political, social, criminological, legal and operational implications. This project advocates that understanding human rights is to recognise that the rights of victims and public protection, is embedded within its core principles (JCHR, 2006, p.16). This project will recommend that practitioners must familiarise themselves with human rights legislation, and, should keep themselves up to date with relevant case law (Scott, 2002, p.15). Implications for adopting this approach will lead to an increase in legitimate practice (Scott, 2009, p.17), which could ensure that any future cases brought against the Probation Service are unlikely to succeed (Gelsthorpe, 2007, p.496). Furthermore, this project recognises a need for the MAPPA procedure to take a

more collective approach in safeguarding offender's human rights; MAPPA agencies should make the application of human rights their shared professional responsibility and should avoid the perusal of individual agendas. Lastly, 'human rights protection' should become an established feature at every level of probation practice. The aim of the Probation Service should therefore be to achieve a 'rights balance' (Gelsthorpe, 2007, p.505), whereby the rights of victims and offenders are equal, and do not supersede each other (Gelsthorpe, 2007, p.500). Ultimately, there remains a need for a combined public protection and human rights political and theoretical discourse, which recognises that the two can co-exist (Whitty, 2007, p.203). This research hopes to highlight an area of need which should be addressed in the new probation infrastructure. Although this study focuses on National Probation Service (NPS) practitioners, the study might be of interest to Community Rehabilitation Companies (CRC) managing low and medium risk of harm offenders.

- Aim of the research

The primary aim of the research in question is to highlight the human rights expectations, challenges and implications within the practice of MAPPA probation officers in England. This will lead to an increase in legitimate practice, which could ensure that any future cases brought against the Probation Service are unlikely to succeed. It is also the intent here to show that the tensions between human rights and public protection is a prime example of how a CJS must recognise the demands of Due Process and Crime Control. Identifying those tensions and their socio-political causes constitutes a primary objective of the project and one that directly informs the purpose of working towards a rights

balance among victims, offenders and the public. Ultimately, there remains a need for a combined public protection and human rights political and theoretical discourse, which explores if and how the two can co-exist. It is the above need that the project addresses and aims to provide a resolution for so that a human rights culture can develop in the new probation infrastructure.

- Research Questions

(a) To what extent do Probation Officers take regard of human rights legislation, when administering Licence conditions, restrictions and other controls upon offenders with whom they manage in the community?

(b) To what extent do Probation Officers prioritise the human rights of offenders with whom they manage in the community?

(c) To what extent does the National Probation Service ensure operational compliance towards human rights legislation?

(d) Are Probation Officers aware of human rights legislation and how it might be significant to their management of offenders?

(e) Are Probation Officers aware of human rights case law and how it might be relevant to their management of offenders?

(f) What attitudes do Probation Officers have towards a human rights-based practice?

(g) To what extent have Probation practitioners received adequate human rights training, pre- or post-qualification?

- Methods

Semi-structured interviews with MAPPA Probation Officers

Content Analysis of the interview data

Documentary Analysis of relevant case law

- Benefits to HMPPS and academic knowledge

The research's aims are directly linked to HMPPS priorities. The relevant agency delivers the orders of the courts by supporting probation and other criminal justice services, providing information to victims, and ensuring the whole system focuses on rehabilitation of offenders and reforming communities. The project becomes beneficial to HMPPS as it examines the legal expectations placed on probation officers, explores the practical implications of victim issues, and suggests a rights culture that can reduce reoffending and lead to a more transparent and efficient probation service. HMPPS has a clear and dedicated focus on reforming offenders and protecting the public while ensuring best value for money from public resources. It strengthens the frontline and empowers those who work closely with victims and offenders. The current study has the potential of minimising the expenditure of public resources exactly by ensuring that less cases based on human rights violations are brought to court. Indeed, the focus on the probation officers' attitudes rather than the service as a whole does strengthen the frontline of probation since it can contribute towards a more accountable work ethic. The originality and contribution to knowledge of this study primarily relates to its perspective of analysis in answering the research questions. Previous examination of practitioners' relevant attitudes has been limited and in need of further evaluation and analysis on the basis of criminological and socio-political influences. Moreover, the project's contribution

to knowledge relates to another area that has been neglected in the current literature and research, namely victims and their rights. The focus on the rights of offenders as an area of concern has added on the wider attitude of neglect towards the victims of crime. This project aims to bring under the human rights discourse the rights of victims as well and examine the extent that the probation service can provide for victim participation. Implications for adopting this approach will lead to an increase in legitimate practice, which could ensure public protection whilst maintaining observance of offender and victim rights.

## **QUESTIONNAIRE**

### **Set Opening**

- Establish Rapport

Hello, my name is Kyros and I am a PhD researcher at the University of Wolverhampton. As my research focuses on the probation service, your time in participating is very much appreciated.

- Interviewee Background

Before proceeding to the actual interview, I would like to ask you some background questions such as your age category, gender, years in service, education.

- Aim of the Research

The research specifically focuses on the probation officers and their task in balancing human rights and public protection. The primary aim of the research is to highlight the human rights expectations, challenges and implications within the practice of probation officers in England and Wales.

- Brief Reminder of Ethics

I explain any possible benefits to the participant from taking part in the study. I also focus on the wider benefits of the study findings in terms of future benefits to understanding practice. I do not intend to exaggerate the possible benefits to the particular participant during the course of the study as this could be seen as



coercive. I also explain any potential risks for participants that may occur if they decide to take part. I explain how the data my participants provide will be stored and how their data will be presented in my write- up. A discussion will be made on anonymity, confidentiality, security of storage and removal of identifying information as the main considerations. I also explain that if anything is raised during the interview that indicates that either the participant or someone else is at risk of harm, then these concerns will have to be taken further. I further explain where they will be taken to and whom the information will potentially be shared with. I tell the participants how the findings will be disseminated, and when and where are the results likely to be published. Although relevant consent will have been sought prior to the interview day, the interviewee will be again asked whether they agree to the interview being recorded by a voice recording device.

- Duration

The interview should take approximately 1 hour. Are you happy to proceed with the interview at this time?

### Questions List

- **Intro**

As a MAPPA PO, you mainly manage level 2 and 3 ex-offenders. Could you give some generic professional background as to:

Years of service

Type of offenders supervised

Qualifications held

Other responsibilities outside offender management

**N.B.** Although a questionnaire had been set in place as above, this was used for guidance purposes rather than in a strict adherence manner during the actual interviews due to the semi-structured type employed and to provide the participants the opportunity to express ideas or raise matters that the questionnaire may not have considered.

- **Public Protection**

- 1) Could you describe how any public protection **training opportunities** have assisted you in understanding human rights obligations?

*Probes*

- a) would you say that was more **legally or technically** orientated? Can you refer to specific instances of training pre- and post-qualification?
- b) has it brought to your attention any **specific cases, legal instruments** that have proved beneficial in your management of offenders and victim support?
- c) if so, in what ways?
- d) was **human rights legislation** part of that training - what **policy documents**, legal instruments and/or case law do you usually refer to in appreciating the demands of public protection and the application of human rights law in practice?

e) overall, are there, according to your professional opinion, **any grey areas** in terms of public protection which **further training could clarify** for the benefit of MAPPA operation?

f) could those be resolved to some extent by any human rights specialised training?

g) has the training assisted you with responding to **conflicting rights considerations**?

h) has there been any specific training on MAPPA Guidance 2012? If so, has that involved human rights?

...

2) What **pressures** are there on probation officers in terms of **ensuring a balance** between public protection and human rights?

*Probes*

a) have those pressures **affected any of your decisions** in relation to management and supervision plans?

b) have, according to your professional opinion, those pressures been **beneficial or detrimental** to the efficiency of probation officers under MAPPA?

c) if so, could you explain how they can prove beneficial or detrimental in practice?

d) how, if at all, would you say that **popular and media criticisms** have affected the balance between public protection and human rights?

e) how do you respond to/cope with the situation both professionally and personally?

3) How has your **cooperation with other agencies** under MAPPA supported the protection of the public?

- Probes*
- a) has the multi-agency system interfered with/supported your contact with offenders?
  - b) if so, how?
  - c) how do you incorporate **professional opinion from social workers, health professionals and others** to your meetings with offenders and associated supervision plans?
  - d) how is **communication** and cooperation between yourself, the different agencies, and the offender normally manifested?
  - e) when/how do **human rights considerations form part of those discussions** or become a relevant part of the deliberations, and in what terms are they usually expressed? Are human rights issues actually raised?
  - f) To what extent do the current risk assessment mechanisms reflect the situation and circumstances of individual offenders – employment, education, family, finances etc.?
  - g) To what extent is there strict adherence to the MAPPA Guidance 2012? Panel chair's role?

...

- **Victims**

1) What are the main **legal and policy documents you refer to when considering victims** of crime and their rights?

- Probes*
- a) how do you interpret 'victim rights', and what are their practical applications / implications for the MAPPA probation officer?
  - b) how are those practical applications reconciled with public protection and offender rights considerations in the instruments you referred to earlier?
  - c) has there been **recent training opportunities around victim protection schemes**, victim rights and their applications in the area of probation?
  - d) if yes, what do they usually involve?
  - e) have those also addressed the above concerns among offender rights, victim rights and public protection?
  - f) in view of the above, is there a clear framework under MAPPA guiding/supporting the balance among the three?
  - ...

2) In what ways do **victim considerations affect the supervision** of offenders?

- Probes*
- a) has communication with **other agencies** assisted with this interaction?
  - b) what steps are normally taken?

c) would you say that the existing framework provides for most of the **needs of victims** of crime? Are there any in particular which remain unaddressed?

d) thinking of your experience with victims, the instruments discussed above and your communication with other services under MAPPA, in what ways can **victim participation** be manifested in the probation process?

e) thinking of the same, would you express/interpret the needs of victims in terms of rights? Are these in other words interchangeable in the context of probation?

...

3) To what extent does **knowledge of the victim** affect your judgment or decision- making processes?

*Probes*

a) what are the main considerations here?

b) in what ways could the **probation officers' contact with victims be enhanced?**

c) does MAPPA provide a receptive environment for restorative initiatives, such as victim participation, mediation, offender reintegration etc.?

d) thinking of those initiatives and your contact with victims, were similar needs/concerns of participation and information expressed by the victims you have seen?

...

- **Crime Control and Due Process**

1) In what ways, if at all, does the **availability of resources and staff** affect human rights and the management / assessment processes more broadly?

*Probes*      a) are there pressures in terms of **expediency**?

b) are those always related to limited resources and **time management**?

c) if not, are there **external limiting factors**?

d) has your contact with offenders been in any way influenced by resources considerations?

e) is your **caseload** generally manageable?

f) could you describe the ways through which contact or meeting with ex-offenders is manifested?

...

2) To what extent, if at all, does the **risk level** the offender is assigned to affect the **transparency / openness of the supervision process**?

*Probes*      a) how would you interpret transparency or accountability in this context?

b) is it more or less likely that **human rights practice may be affected in cases of more serious offenders**, i.e. management levels 2 and 3?

- c) are there safeguards in terms of operational compliance when dealing with more serious offenders? Could you refer to any relevant guidelines?
- d) do you feel that **your observations when meeting with offenders, i.e. housing needs, signs of remorse, expression of anger or intention to reoffend etc., are in line with what the risk assessment tools provide?**
- e) have there been times you thought that a given **risk assessment has over- or underestimated the risk** posed by an offender, thinking of your contact/meetings with the same offender?
- f) have there been instances where offenders have expressed concerns about their rights and the level of risk they were assigned to?
- ...

3) To what extent are the terms 'rights balance', 'human rights best practice' and 'human rights culture' interchangeable?

- Probes*
- a) do they bear any connotations when referring to the rights of victims and ex-offenders?
  - b) or, are they part of the process of compliance with human rights legislation?
  - c) considering the rights involved and the need to protect the public by reducing reoffending, how feasible is for the probation service to adopt a human rights culture?



d) what, if any, according to your opinion would have to be changed in the task?

...

- **Human Rights and Recent Issues**

1) Has **privatisation influenced your management of offenders** as a public sector / MAPPA practitioner?

Probes                      a) if so, in what ways?

b) is there **any cooperation/communication** with the private sector?

c) if so, **has that helped in better understanding the rights of offenders** and victims?

d) what challenges, if any, has privatisation created for the public sector probation?

e) do you recognise any similarities between the two sectors? If so, what are the ones mostly related to the rights of offenders?

2) Have any **initiatives of other organisations/agencies** helped with managing offenders and supporting victims?

Probes                      a) if so, could you give any **specific examples/programmes**?

b) have any of these provided new ways to accommodating the rights of offenders/victims?

c) have any of these been focused on providing staff training and support?

d) have you participated in any of the relevant programmes?

e) if so, how has these supported your professional development and understanding of ex-offenders rights?

3) As far as ex-offenders are concerned and the **ability of people to change**, what are the **necessary skills on the part of MAPPA** practitioners to support this ability?

- Probes
- a) how, if at all, can that process be facilitated by human rights?
  - b) in what ways do the current risk assessment systems accommodate, take into account or support this ability?
  - c) are there any ways that victim participation could assist with this process?
  - d) could you describe any relevant skills development programmes?
  - e) what, if any, is the impact of resources and the evolving environment of probation on that process of change?

## Appendix 8: Initial Coding

Theme/code	Definition
1. HUMAN RIGHTS	Understanding of notions of human rights in terms of both theory and practice; legislative/statutory instruments or policy documents; level of priority assigned to rights considerations. Human rights training the participants might have taken. Introduction to the balancing act between rights and public protection
2. RISK	Approach of practitioners towards risk, place and level of priority assigned to risk within probation; risk processes and tools used in the assessment stage; effect on decision-making and rights
3. RELATIONSHIPS	Focus on the different relationships with the probation service, the challenges found in each and the differing balancing acts that need to take place, i.e. offender/practitioner (working), practitioner/practitioner (professional), practitioner/public. How these relationships are developed, what are the obstacles, challenges, benefits in developing those relationships; the importance of language and communication; implications for understanding rights
4. PRESSURES	Pressures, demands, expectations placed on probation officers as coming from the media, public, managers, the offender, colleagues, other agencies and victims/families; effect on the risk assessment/management as well as well-being of practitioners
5. MAPPA	The framework itself, operation, multi-agency nature, premises, place of probation in that process; challenges, benefits, areas of improvement and imbalances the participants see in its structure and implementation; focus, extent to which it accommodates rights considerations, tensions/conflicts and communication
6. VICTIMS	The ways probation officers incorporate the voice of the victim in their assessments either through VLU input or VIS; needs of the victim, whether needs of the victim are understood as rights, how the rights of the victim may pose another challenge in accommodating the rights of the offender; not just about balancing offender rights and public protection but also victim and offender rights; attitude towards victim rights and conflict of interest

## Appendix 9: Illustration of final coding manual

Theme/code	Definition	Examples
1. HUMAN RIGHTS AND RISK	Understanding of notions of human rights in terms of both theory and practice; legislative/statutory instruments or policy documents; level of priority assigned to rights considerations. Human rights training the participants might have taken. Introduction to the balancing act between rights and public protection in the interests of understanding the approach of practitioners towards risk, place and level of priority assigned to risk within probation; risk processes and tools used in the assessment stage; effect of decision-making and pressures on rights.	<p><i>“the term human rights doesn’t stand out in practice at all ... feels like giving lip-service because it has to be covered so to speak ... my own personal knowledge of the Human Rights Act is sketchy ... I’m not familiar with the separate Articles ... it’s almost like a side thing.”</i></p> <p><i>“Risk with a capital ‘R’ is in all its different levels in terms of what the risks actually are, would override everything else”</i></p>

<p>2. RELATIONSHIPS  IN OFFENDER  MANAGEMENT</p>	<p>Focus on the different relationships within the probation service, the challenges found in each and the differing balancing acts that need to take place, i.e. offender/practitioner (working), practitioner/practitioner (professional), practitioner/public. How these relationships are developed, what are the obstacles, challenges, benefits in developing those relationships; the importance of language and communication; implications for understanding rights within the framework itself, its operation, multi-agency nature, premises, and place of probation in that process; challenges, pressures,</p>	<p><i>“your relationship is about good quality contact, good quality dialogue and just plain speaking, that’s what I tell my offenders [...] always, the more contact you have the better quality assessment you can make in terms of your decisions because you become familiar and acquainted with whatever that person is about”</i></p> <p><i>“sometimes you do feel slightly intimidated and other agencies who haven’t said anything against what you are doing</i></p>
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	<p>benefits, areas of improvement and imbalances the participants see in its structure and implementation; focus, extent to which it accommodates rights considerations, relationships, tensions/conflicts and communication</p>	<p><i>in the meetings certainly change their attitude and it all comes back to 'why didn't you recall why haven't you done this why have you done that' and the cases, although we hold them, they are not just our responsibility, the whole purpose of MAPPA it's to work collaboratively"</i></p>
<p>3. VICTIM RIGHTS IN PROBATION</p>	<p>The ways probation officers incorporate the voice of the victim in their assessments either through VLU input or VIS; needs of the victim, whether needs of the victim are understood as rights, how the rights of the victim may pose another</p>	<p><i>"we would not be looking to say you can have supervised contact with the victim because that individual might say 'it's my human right to have contact with my children'; but it's</i></p>

	<p>challenge in  accommodating the rights  of the offender; not just  about balancing offender  rights and public protection  but also victim and offender  rights; attitude towards  victim rights, external  pressures and conflicts of  interest</p>	<p><i>also the child's  human rights that  you violated so, we  would not be looking  to put the offender  service user's needs  above the welfare of  the child"</i></p>
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## Appendix 10: Excerpt from analysed transcript

**N.B.** The example in the following page is an electronic illustration of the analysis of the transcripts. This, however, does not include the entirety of the process or the themes because the coding and analysis was done manually, i.e. on paper copies of the transcripts.

Green = human rights

Purple = risk

Blue = relationships (offender)

Yellow = relationships (professional)

Letters in red = direct evidence of attitudes or contribution

Text boxes = initial thoughts of researcher

## MELPOMENE

### Background

Qualified 21 years ago

Social work academic background

Work in the courts a lot and supervises various types of high-risk offenders

### Human rights introductory points and discussion

PO admits that there are loads of policy, guidance, practice documents that explain aspects of their work and practice **but "the term human rights doesn't stand out in practice at all"**

Refers to MAPPA meetings which again the same attitude is described and issues that sound like human rights feels like **"giving lip-service because it has to be covered so to speak"** and

PO does not have the sense that is given the required attention

Notes that MAPPA meetings proceed in a certain way as to what areas need to be covered and there's only a tiny section on human rights and that's about it; **"it's covered because it has to be covered"**

PO never had a case where human rights was a matter of contentious discussion during the meetings and concludes **"my own personal knowledge of the human rights act is sketchy**

**[...] I'm not familiar with the separate articles of the human rights act"**

PO says however that the right to family life tends to be mentioned but again doesn't feel familiar with the terms; however notes that there is **an assumption that they are expected to know about this** and despite that some may be familiar with general human rights

principles PO doesn't think there is proper knowledge of the sections and structure among colleagues; **"it's almost like a side thing"**

(the PO found it quite **difficult to recall the above information or use human rights terminology and took quite some time in between sentences before going on**)

- unfamiliarity with actual legislation  
- no apparent attention given to HR by the service  
- no accurate knowledge of HRA

### Training

Long time ago PO can barely remember anything too specific

In PO's recollection **no human rights specific training** nor any other type of training where human rights was part or only mentioned

PO felt it relevant here to use the example of probation in prisons and their experience with the prison process to again state that whether MAPPA, probation in the community or prisons **"it's not a piece of legislation that jumps out in the way we think because we think in terms of risk, that is our priority"** and as a result PO feels like it's not something that

professionally they have taken particular interest in separate or as part of their work

Interestingly however PO mentions that this research has made them start thinking about

this more admitting **"this is prompting me to give it more thought"** not necessarily because it has been overlooked but rather because other things have taken priority

- no HR training whatsoever  
- HR do not jump out because risk is priority  
- evidence of contribution of thesis

### Human rights understanding as PO

PO uses an example to demonstrate this: license conditions and intention to restrict visiting family because offender would hide victims in their family address and family would not be aware of victim in the premises; PO wondering **how is this going to work in terms of restricting access to family which otherwise the offender could be using as a form of support**; level 2 case for the PO

- appreciation of potential benefits of HR?

When presented with hypothetical scenarios by the researcher in order to clarify what is the decisive factor when balancing risk and rights PO assures that **risk tends to override** but **"the need to protect from risk of harm is carefully balanced and I wouldn't say as practitioner we are risk averse but the risks would override that"** (although PO not sure whether override is the right word to use in terms of balancing) but still appears confident to say

Contradiction?

**"Risk with a capital 'R' is in all its different levels in terms of what the risks actually are would override everything else but I think also especially with persons who have committed sexual offences it cannot be all about risk because you have to allow offenders to grow [...] to manage their own risks, to be aware as opposed to restricting them completely even though some offenders feel restricted in their own minds anyway"**

PO elaborates on the 'grow' part and explains you have to allow them to "live" build friendships **meet people and monitor that so there has to be a balance**

Interagency working PO feels are aiming to **manage through different agendas** that conflict when you want to allow more freedoms but another agency does not agree and feel like they need to reign that person and have a tighter control and that the PO sees **tensions there which are difficult to work through: "overriding is about risk"**

- PO understands the relevant tensions  
- risk remain priority

PO finds it **challenging to make direct links between risk factors like substance misuse, offending history, accommodation etc. and human rights** considerations and says instead that if there are issues or concerns around those factors then what they do and know is that they have to be monitored and that a **more relaxed approach may be adopted with signs of recovery** but when somebody lapses you respond accordingly and to what is happening at the time (**no direct reference to how human rights would affect this 'response' though**)

- risk and rights merge

PO gives an example of offender with heavy drinking habits; when the offender got into an argument with the a member of the public whilst being drunk in the daytime the PO at that point did think of recalling him knowing that the alcohol would elevate the risk but decided against that and instead put back in place a curfew and daily sign in and refer back to alcohol agency etc. instead of recalling him; the PO seems to be giving an example where **indirectly they have thought of an instance where recalling would unnecessarily or disproportionately interfere with right to liberty potentially but interestingly when asked whether that was the thinking behind the decision she says "you don't think in terms of liberty, you think in terms of rehabilitation, for me it wasn't so much about liberty it was the fact that [...] this man has worked so hard to get himself this far, get his release, liberty is not the first thing pop in to your head, it's about risk, has the risk changed; those are the sort of conversations in your head as opposed to liberty"**

- says a lot about attitudes and way of thinking re HR in OM  
- treats HR and rehabilitation as separate -> link to case law contrary observation

MAPPA

PO believes mappa is good but human rights is not an “automatic” thing you think about there

Information sharing has been good and necessary, and PO says happens by email, verbally etc though which risk management plans and risk assessments are shared, actions discussed and agreed during panel meetings; in PO’s experience communication has been good but in instances where you’ve taken on a new case the data accuracy aspect has been out of date. And sometimes PO feels that “other agencies may lay emphasis on specific risks they focused on and that can sort of skew your view of the person and actually you may be the only person who actually knows your offender properly or more so than the other agencies and I think in instances like that you need to communicate where you can see sort of different sides of the offender with the other agencies you are working with otherwise the view of the risk of the person can be skewed and that’s when some of the tensions can arise”

- difference of opinion about the offender  
- conflict of priorities  
- mappa skewing view of who the offender is?

PO gives an example of a conflict with another agency where they felt they knew the offender more due to more contact with them; interestingly the PO believes that with the frequent contact and knowing the different facets of the offender “you can represent your offender better and in terms of their rights you’re better placed to represent your offender if you know him”

PO elaborates on example in which offender posed risk to women and offender raised issue with friendships, going to church, resources in the community etc. which offender felt the need to have access to and draw upon and PO would say that’s okay and would allow all that but the police in that case wouldn’t want him to go to certain places even if it was for jogging; PO says you either come to a compromise or rather explain to the police where that person is coming from and explain that these are the risks but this is where he is at based on progress made on rehabilitation “you won’t have a sense of that until you get to know the person” and PO seems like finding themselves in a situation of an intermediary or an advocate for the offender and “that can be tricky but you want some balance [...] there has to be some relaxation a person can’t be locked up all the time or stay in an approved premises all the time without going out and being able to live”

Knowing the person = better knowing their rights?

#### OASys and other assessment tools

PO believes the quality of these is much better than it used to be in the past but it takes time; focus is on the risk of harm and the risk management plan; what’s good PO says is that they are now more thorough in terms of highlighting risks the person poses, understanding of triggers, protective patterns, what other agencies need to be involved, what sentencing stage the person is, where they are at that moment in time; PO appear to be saying that they make practitioners “aware” of all of the above if the risk assessment and management plan are “comprehensive”

- advocate of the offender = advocate of HR?  
- balance between agencies = balance between HR and PP?

Risk of harm and risk management plan section of the OASys document the PO feels are the most important; scope to include everything about the offender but focus is on the risk. Only downside PO sees is how lengthy OASys is to complete

PO can’t recall though any section that relates or accommodated specifically human rights concerns; “in all the reports and documents that we write, human rights is not mentioned apart from the MAPPA minutes, it’s not mentioned as a separate ... you don’t tend to think of rights as rights in their own right”

PO says here that they want the best for the offender and provide as much support as they can and make sure the offender reach their potential re rehabilitation but nevertheless the human rights idea in the strict sense does not stand out even though the PO think of the offenders as human beings who have done mistakes and their role is alongside them to help them understand their own risks but **"public protection is what we do"**

PO elaborates on the working alongside your offender aspect and how it's important to emphasise to them your role in this "change journey" and believes **"it works because they know that you see them as a person, they are not just the sum total of their offence, they are more than that"**

- see them as a person = respect for HR?

PO also mentions another aspect to be aware of when considering this aspect of risk assessment and rights and relevant factors which is the 'probation language' and how they use a certain language or how they use language in a certain way and more importantly how the PO believes that the way the offender speaks with them you can tell whether and for how long and in what ways the offender has been through the criminal justice system; and then the PO reflects on this and realizes that even the way they practitioners use language it's not in terms of human rights or expressed in that manner so there might some subconscious level where rights are considered otherwise they wouldn't be doing what they do and that's when **"you want the best for your offender and what I mean by that is [...] all the parts of their life and you support them in that and you see the person holistically"** but what makes this hard PO admits is caseload numbers; **"you can't do that with everybody, you can only do that with some [...]"** particular cases I've had who I've had long term I've got to know the offenders long term somebody's been really difficult people to work with but the fact that I've had that time I've had the difficult contacts the difficult interactions with them with the person **that's paid off in the long run"**

Initial links between HR and relations hips...

#### Relationship with the offender

- HR not embedded in the language of probation  
- seeing the person holistically = HR?

Contact and dialogue with the person PO sees as forms of building relationships with them as well as explaining decisions to them; **"plain communication is in my view the key and consistency and a level of empathy"** and then PO believes the offender will communicate to you when they feel supported they will verbalise that to you even if it takes a few years with some cases to get there

PO believes OASys is no substitute for the above; one reason being that a lot of the information the system asks should and does come from the offender and **"your relationship is about good quality contact, good quality dialogue and just plain speaking that's what I tell my offenders"**

Merging of risk and relationship s themes

**"always the more contact you have the better quality assessment you can make in terms of your decisions because you become familiar and acquainted with whatever that person is about"**

PO also thinks it's important to establish some contact with family of the offender as well esp where they are part of the support group of the offender and esp as part of reintegration of the offender back to a normal life in the community; give families access to PO and communicate their concerns; PO believes **"in terms of control and protection and restoration and moving forward and the fact that it's a process that it's moving and changing those who do well as difficult as it is are the ones that allow that level of**

Contact with their family helps understanding their rights?

- PO recognising that HR may come in on a subconscious level; but is that enough? What about HRA? HR as common sense? Making own sense?

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